SPECIAL COMMITTEE ON FINANCIAL CRIMES, TAX EVASION AND TAX AVOIDANCE (TAX3)
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PUBLIC HEARING

COMBATTING MONEY LAUNDERING IN THE EU BANKING SECTOR

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Panel I: Danske Bank and money laundering allegations
Mr Howard Wilkinson, Danske Bank whistle-blower
Mr Stephen M. Kohn, counsel to Mr Wilkinson and expert on whistleblowing

Panel II: Money laundering in the EU Banking Sector: what is failing?
Mr Diederik van Wassenaer, Global Head of Regulatory and International Affairs, ING Bank
Mr Jesper Nielsen, Interim CEO, Danske Bank
Ms Åsa Arffman, Chief Legal Counsel, Swedish Bankers’ Association

Panel III: Better cooperation for better results in the fight against money laundering:

Enhancing the role of the EBA in AML supervision of the financial sector
Mr Adam Farkas, Executive Director, European Banking Authority
Mr Martin Merlin, Deputy Director General, DG FISMA, European Commission
Ms Alexandra Jour-Schroeder, Acting Deputy Director General, DG JUST, European Commission
1. PANEL 1: DANSKE BANK AND MONEY LAUNDERING ALLEGATIONS

Chair. – Good morning, ladies and gentlemen, we will start our hearing. Welcome to the meeting of the TAX3 Committee. In parallel, there is still a vote going on in the Committee on Economic and Monetary Affairs, and as we share some members they still have to be there, but we don’t have time and we must start.

Today’s topic is combating money laundering in the EU banking sector and our hearing will consist of two parts, with a series of presentations by our guest speakers. As you know, one of the things we will be talking about is the issue of Danske Bank, so we will touch on the core of anti-money-laundering work in the EU. In this committee we have been following the Danske Bank scandal and the fight against money laundering in a very systematic way. We have already had a public hearing on Danske Bank, in the spring, and there will be a mission from the committee to Estonia and Denmark, for the same reason, at the beginning of February next year.

I would also remind you that, as the mandate of this committee is quite broad, there will be a mission from the committee tomorrow and the day after to the Isle of Man.

Coming back to today’s hearing, the first part will be in two separate panels. In the first one, we will hear from Howard Wilkinson, whistle-blower who worked at Danske Bank, and from Stephen M. Kohn, who is Mr Wilkinson’s counsel and an expert on whistle-blower protection.

In the second part, we will talk with financial and banking experts and representatives, and finally in the second part of the hearing, in the third bit, we will exchange views with the European Banking Authority and the Commission on the cooperation between anti-money-laundering and prudential supervisors in the European Union.

I would like to welcome Howard Wilkinson and to thank him very much for being here today. You will know that he had a demanding hearing at the Danish Parliament two days ago, and I appreciate very much his activities and his presence here. If you would be so kind as to begin with your introduction, Mr Wilkinson, the floor is yours.

Howard Wilkinson, Danske Bank whistle-blower. – Chair, money laundering doesn’t recognise borders and so what better place to talk about money laundering than in the European Parliament, where your whole focus is on coming up with pan-European solutions?

In the case of the Danske Bank scandal, this EUR 200 billion scandal, there were at least 10 banks involved. It wasn’t just about Danske Bank in Estonia, not even about Danske Bank in Denmark. There’s a whole load of banks that were involved, and a lot of banks from European countries. Within Danske itself, suspicious money moved through the operations in Lithuania, in Estonia, of course, but also in Denmark. If we take the left of the slide, the money typically started in Russia, where there were some Russian banks through which the money moved, but there was also the Russian subsidiary of a European bank. There was also the Russian subsidiary of a US bank. We are seeing the European connection even within Russia.
If we take the right-hand side, where the money goes out, we see two large American banks through which the dollars moved, but we also see the US subsidiary of a European bank. It’s important to stress these corresponding banks in the United States. In my estimate, 80% to 90% of the money that went through Danske Bank ended up in dollars, leaving through US correspondent banks, into the financial system. The banks in the US, including the US subsidiary of a European bank, were basically the last check. Once the money got through them, it was out, clean and into the global financial system.

So, we’ve got all these banks, but we don’t really know very much about what the banks actually did. Perhaps we know a fair amount now about Estonia, but let’s take Danske Bank in Denmark. According to the Danish FSA (Financial Supervision Authority) report, there were some payments, but they were only technical in nature. The question is: is this actually true because there were people from Estonia talking to people in Denmark multiple times a day regarding transactions – is that only technical?

Let’s talk about Lithuania. I was told in January 2014 that Danske Lithuania was not allowed to have non-resident customers. Yet it turned out that in 2012, a British Virgin Islands company, which to me sounds quite non-resident, sent over USD 100 million through a US correspondent bank into the account of a customer of Danske Estonia. This customer was subsequently kicked out because of money-laundering problems. It does raise the question why, if the Lithuania branch was not allowed to have non-resident customers, firstly, it had non-resident customers (because that wasn’t the only one), and second, it had managed to pick up such a bad one, but we hear nothing about that.

A Russian subsidiary of a European bank. It was interesting because the feedback from the customers was that they were very pleased when this rouble correspondent bank account was opened. If we go back to this slide, apparently the two large Russian banks were actually rather strict regarding payments, according to the customers, but the Russian subsidiary of the European Bank had, let me say, a rather relaxed approach to checking documentation.

The US subsidiary of a European bank. Nine years, it took at least nine years before the account was closed. For the first US bank, seven years, at least seven years, and even the second US bank, which only opened a correspondent account after the first US bank had exited, took two years before they woke up to the problems and closed the relationship with Danske Bank.

What we see is that the scandal touches eight EU countries and the US. That’s eight EU countries just in the first wave. That’s not taking into account that money probably went to every single EU country. We’ve got Estonia and Denmark, Lithuania, we’ve got the US and we have the home countries of the two European banks: the home country of the bank with the Russian subsidiary, and the home country of the bank with the US subsidiary.

In my view, just as important and just as culpable are the countries where there are shell companies implicated in the schemes. On Denmark as those of you who heard the Danish hearing on Monday, we talked about K/Ss (Kommanditselskab), which are a limited partnership structure in Denmark that was being abused. The bank’s report found, I think, 54 such companies, and they were all suspicious, every one. I actually reported them to the bank management. It was ignored.

But clearly the worst of all is the United Kingdom. I think one has to be slightly polite when one comes to an institution like this, but one doesn’t have to be polite about one’s own country. The role of the United Kingdom is an absolute disgrace. Limited liability partnerships (LLPs) and Scottish liability partnerships have been abused for absolutely years. Some enterprising journalists in the United Kingdom found an example of a company that actually wasn’t an LLP; it was just a normal, regular limited company. This company had a director. The director had
been born, got married, and become a director of the company within three months. Pretty good going.

There are also countries in which parallel schemes operated. One customer I met, who was subsequently implicated in a suspicious activity, told me that they were carrying on the same business in Latvia. A colleague who visited customers in Moscow was told that similar stuff was going through the Czech Republic.

I want to just give a few little mini case studies because the role of the regulators has been very important. Not necessarily in a very positive way. Regarding the Danish FSA, let me give you on the left of the screen an extract from an internal email. This internal email was sent by a senior manager in Danske Bank and it read, ‘The FSA has helped the bank in a critical situation’. If the senior executive in the bank thinks that the Danish FSA has helped them, I think it’s a pretty fair bet that the Danish FSA did actually help them, and that raises the question: is it the role of the FSA to help banks, to help the largest bank? You’ve also got some other questions. Would they have helped a Swedish subsidiary in Denmark? Would they have helped the Swedish subsidiary in a critical situation, or was it only the largest bank in the country? There are some real issues also about fairness.

The second quote: I can’t, unfortunately, name the people, but what I’d say is that the second person was not an official from the Danish FSA, and the first person was an official from the Danish FSA. These comments were reported to me in January 2015. January 2015 was before any of this really blew up, so I don’t think there’s any reason to doubt, but why would this person make this comment up and tell me? What he said was that the official from the Danish FSA said, ‘I don’t care in the slightest what happens in Estonia. My job is to protect Danske Bank.’ We’re seeing a theme here: help and protect. Does this comply with EU law? Is this what you expect from regulators?

Let’s move on to the Estonian FSA. The Estonian FSA was almost like two FSAs. There was one FSA starting in 2014, which was very active, and there was one before 2014. We’ve got one particularly terrible example here. On 7 April, we learned that the Estonian FSA had contacted the Danish FSA again – it had happened before – about, in this case, blacklisted Russian customers, and the Estonian FSA had said that they’d contacted the bank twice, but they had the impression that the bank in Estonia didn’t take the issue very seriously. That was on 7 April, but something magical happened in the next three weeks because by 25 April, in an agreed minute between the Estonian FSA and Danske Estonia, now we find that there has been cooperation that’s been effective and constructive, and there are no reproaches. I don’t understand what happened in those 18 days.

Let’s look at the role of the Estonian Financial Intelligence Unit (FIU), and I think this is a particularly shocking example of failure. This example relates to a company I’m going to describe as ‘A’. In June 2012, A opened an account in Danske Estonia. In February 2013, the company was reported to the Estonian FIU. In July, it was investigated by the FIU. Now ‘investigated’ was the bank’s word. I take that to mean that the Estonian FIU came and asked a lot of questions. On 18 July, the FIU came and asked more questions. On 25 September, the company closed its accounts but the owner just set up some new ones, and in April 2014 when I left, four related companies still had accounts open.

But there’s something missing here because on 19 July, only one day after the inquiry, the company filed accounts with the UK’s Companies House that were definitely false. So why didn’t the Estonian FIU figure that out? All they had to do was look on the website. All they had to do was ask the UK authorities to help them.
Finally, I’ll talk about non-disclosure agreements. As has been well reported, I signed a non-disclosure agreement which prevents and has prevented talking to the authorities without the permission of the bank. This is it. You don’t see them very often for one very simple reason. If you look in the bottom right-hand corner, they’re ‘secret’. There’s a number of very important issues here. You see that it’s not all that short.

I, of course, had legal advice on this at a later date after I signed it about what it actually meant. I can’t tell you what the advice was, but what I’ll say is that in mid-2015, my understanding of the legal position was that it might be enforceable in preventing me talking to the authorities, but it might not and as a private citizen, I can’t take the chance. I will only report if I know that I’m 100% safe.

To conclude, I would suggest there are four key issues. The first issue: it cannot be right to have non-disclosure agreements (NDAs) that prevent disclosure of wrongdoing. You should try to find a way to ban them. Secondly, and as well covered in the very deep and intelligent draft report, preventing the use of shell companies that are established in EU countries. Thirdly, and very importantly, is a new model for regulation that removes the obvious home-country bias that we see in these cases. In the case of Denmark, it’s not so much ‘soft-touch’ regulation as ‘affectionate-caress’ regulation. Finally, I would suggest that the Committee should make recommendations as to how to protect whistle-blowers.

I apologise, Chair, for massively overrunning on my time.

Thank you for your attention.

Chair – Thank you, Mr Wilkinson. I think it was worth it.

(Applause)

Your information, although alarming, is highly appreciated.

I’d like to remind Members and the public that the slides provided by Mr Wilkinson, which you’ve just seen, will be on the TAX3 Committee website after today’s meeting.

I’d now like to ask Mr Kohn to speak.

Stephen M. Kohn, counsel to Howard Wilkinson and expert on whistle-blowing. – Chair, thank you for this opportunity. The issue about protecting whistle-blowers has nothing to do with whether you like or dislike whistle-blowers. That is no longer the question. The only issue is whether you want effectively to combat fraud and corruption.

If the answer to that is yes, it has now been demonstrated that you absolutely must incentivise and utilise whistle-blowers. The reason is obvious, as you’ve heard from Mr Wilkinson. You need an insider. Money laundering, tax evasion, foreign bribery: these crimes, unlike murder where you may see the victim, are hidden. The crimes are effective if no-one knows they happened. Without an insider, you can’t even know there’s been a victim.

In the United States, in 1986, we modernised an old qui tam law that was passed by Abraham Lincoln at the time of our Civil War, and the rule was very simple: incentivise whistle-blowers. If the whistle-blower’s information triggers a successful enforcement action, then you give them a reward; if it doesn’t, you give them nothing; and the reward only comes from the monies paid by the corrupt entity. It costs the taxpayers nothing.
It was an experiment and it is one that we can all learn from now because, after 32 years, our government officials responsible for this programme have concluded that this law to detect fraud is the ‘most powerful weapon’. I call your attention to the word ‘most’. It’s not that the whistle-blowers are helpful or that it’s good to hear from a Mr Wilkinson once every 10 years. If you have a real programme, the whistle-blower who detects the hidden crime becomes the most powerful tool. So, the question before the European Parliament is whether you want to implement the most important tool to fight corruption, or to continue letting money laundering fester until it’s a USD 230 billion scandal.

The proof that the False Claims Act works is in dollars and cents. Because the whistle-blower must be compensated, the United States Government has to calculate all of its fraud cases. Did the fraud come in from a whistle-blower – in which case we have to give them a share – or did we, the Government, catch the fraud through the Inspector General’s contracting agencies, the entire bureaucracy that’s designed to detect fraud? Which way did the information come in?

Well, in 2017, after 32 years, guess what? Ninety-two percent of the fraud recoveries were brought in by whistle-blowers. The Government bureaucracy, which I fully support, to detect crime and fraud brought in 8%. So, when these officials say it’s the most important tool, that’s backed up, to the penny, by solid empirical evidence.

This chart shows you how it has worked since 1986 when the law was modernised. It just keeps going up, as they calculate how much money is brought in from fraud cases. Since 1987, when the first cases were filed, 72% of these cases have come in from whistle-blowers. These are the Department of Justice figures validating it all: an essential tool – numerous quotes to that effect.

The interesting part is that United States law, and whistle-blower laws, are transnational in application. My last count is that over 2 500 non-US citizens have filed under the Securities and Exchange Commission (SEC) programme alone, most of them from Europe. These are thousands of whistle-blowers, who do not have adequate protection in their home countries, coming to the United States to use these laws. They have been paid millions in compensation.

My favourite is the Internal Revenue Service (IRS) tax law. It is the most incredible whistle-blower success. I do not know how many parliamentarians are aware that every known US illegal undeclared account in Switzerland was closed. I believe almost every bank came in and cut a deal. Over USD 16 billion was collected in fines and penalties. Why? Because the bankers obtained protection under US law and it became more profitable for a banker to turn in their US clients then to service them. It is an incredibly effective law which, in 2018, was amended to cover money laundering. This is a model. This is the law you should implement for tax evasion, money laundering and securities fraud.

To give you an example: the countries shown in red here are all the countries in which whistle-blowers have come into the United States to file anonymous and confidential claims under the Foreign Corrupt Practices Act alone – just the Foreign Corrupt Practices Act – because we have effective legislation. This is a quote from the Head of the Securities Exchange Commission at the time she was in that post, and it really sums up what you are hearing from Mr Wilkinson. That’s why his testimony is so important. She called the whistle-blower programme a ‘force-multiplier, generating high-quality tips and, in some cases, virtual blueprints’. That is what you can get through an effective programme.

(Applause)

Luděk Niedermayer (PPE). – Chair, I am sorry I am late because of a clash with the vote in the Committee on Economic and Monetary Affairs.
My first question is as follows. Mr Wilkinson, you disclosed significant shortcomings on the part of the banking institution, but what do you think was the major mistake on the part of the supervisors, who should have been able to uncover such practices earlier?

My second short question concerns your presentation, in which, if I am not mistaken, there is information that similar schemes were operated in other countries, namely Latvia and the Czech Republic. Can you elaborate a little on that?

Howard Wilkinson, Danske Bank whistle-blower. – Thanks for your question. To take the second one first, the same scheme operated – and I know the name of a couple of banks that I was told were involved – in Latvia. It is difficult for me to share, given the confidentiality issues. In terms of the Czech Republic, I am afraid that I don’t know the names of so many Czech banks. I don’t know the name; all I know is the particular scheme that operated and if the Czech authorities are interested to learn in more detail about that scheme – and if Danske Bank gives permission – we’d be happy to share the details in the hope that they can track down which bank was responsible.

In terms of the first question on supervisory failures, the example I gave, regarding the Estonian FIU (Finance Intelligence Unit), I don’t know what to make of that. Is that total incompetence? I genuinely don’t know. To me that’s shocking because they could have caught a really big customer really early in the process. I don’t understand. I am at a loss for words as to how that could have happened.

Regarding the financial service regulators, I think at best, there was a lack of clarity about what was going on. We read, in terms of the Danish FSA (Financial Supervisory Authority), that in 2012 they were happily telling the Americans that everything was OK in the group, but now we hear the regulator saying ‘no, what happened in Estonia is nothing to do with us’. There are some problems to do with coordination and clarity of responsibility, but generally, there are some issues of misconduct that need to be investigated as well.

Jeppe Kofod (S&D). – Thank you, both of you, for appearing before our committee today.

Mr Wilkinson, I am thankful that you have come here and are breaking the silence on this very important topic. Thank you for that. On the non-disclosure agreement (NDA) – I also understand that the Danske Bank said that there are no objections to publishing the NDA – will you now publish the NDA so we can see it? You have some of it here already in the slides, but will you publish the whole thing?

Secondly, in the first place, can you tell us why you took the NDA, why you signed it, and what kind of considerations there are on that? I understand that your phone was tapped and recorded. You mentioned that in the hearing on Monday in the Danish Parliament. Can you elaborate on that? Was that a common practice in Danske Bank? Who gave you the information that your phone was recorded and what did they use that information for, vis-à-vis you? Finally, in your written testimony, you mentioned that, on several occasions in 2013 and 2014, you corresponded with ‘senior executives and executive board members’. Can you tell us whether these people are still employed by Danske Bank today?

Finally, Mr Kohn, for you, from a legal perspective, given the international nature of financial institutions, does it make sense for you to have 28 different national rule books on AML (anti-money laundering) and whistle-blower protection in the EU?
Stephen M. Kohn, counsel to Howard Wilkinson and expert on whistle-blowing. – I will just answer your first question. Danske Bank has not communicated to us, either through their counsel or via any other mechanism, that we are free to publish the non-disclosure agreement (NDA). They have made that statement to the press, but they have not communicated it to us and, as Mr Wilkinson pointed out, the NDA says we can’t publish it. So, once they send us that notification we’ll publish.

Howard Wilkinson, Danske Bank whistle-blower. – We did publish.

(Interjection from Mr Kohn: ‘Ah yes’)

We published the relevant clause. I think that you should respect my privacy a little bit and maybe we don’t want the dirty money stuff. What we put on the screen was the clause at issue as regards whether I was allowed to talk to the authorities. My understanding of the legal position was maybe so, maybe not.

Why did I sign the non-disclosure agreement? Let me give you a little bit of the background. When I resigned, the bank had a right to enforce a non-compete clause to stop me going and working for a competitor, and they pay for it. They had the right, but not the obligation. There was no other right to any money. I had a notice period, I expected to work out the notice period and then I would leave and I would be paid for an additional six months for not going and working for a competitor. At the end of April, a senior executive flew over from Copenhagen to meet me. He had in his hand an agreement signed by him. He said it had been approved by his boss, so we’re really getting close to the top of the bank, and it had been countersigned by an executive in the Estonian branch.

The agreement included an ex gratia payment. Now I had no right to an ex gratia payment, but it included an ex gratia payment. When I read the agreement, I was not happy. There were a couple of issues that I raised concerns about. Importantly, one issue I raised concern about was the non-disclosure agreement. My concern was that given what the bank had done, there was no guarantee that the bank really would investigate things thoroughly and take it to a conclusion, but then two things happened. This senior executive looked me in the eye and he gave me his personal assurance that he had zero tolerance for money laundering and he was going to sort the whole thing out – his personal assurance. That’s really what I wanted to hear. Secondly, if I signed the agreement there and then, the agreement would be reworked to give me an extra EUR 20 000. I’ve got a family. I got what I wanted, which was someone senior telling me to my face, looking me in the eye, that he was going to fix it. If I took the agreement out the door, it cost me 20 000, even if my lawyer said it was fine. I took the view that the right thing to do was to take his word for it, take the money, and leave it at that.

Regarding listening to my telephones, it is perfectly normal and correct in banks that certain telephones are recorded. For instance, if I was talking to a customer and the customer called me up and he said he wanted to buy euros and sell dollars, and I sold euros and bought dollars, at the end of the day, we’re going to have a bit of a problem when the customer receives a confirmation for the transaction, obviously. So, you record the phone calls because if there’s a dispute, you can go back and you can listen to them. There’s nothing wrong with that. The bank has said that it was perfectly legal and correct. I agree 100%. Occasionally we did need to go back and listen to the phone calls in the case of a customer dispute. In my case, people in the bank were listening to my phone calls but they weren’t listening to my phone calls with customers. No. A person had gone and identified exactly those phone calls with internal auditors, so we’ve got group internal audit investigating these people, and these people have gone and got hold of recordings of my conversations with group internal audit, who were
investigating them. My lawyer’s opinion was that this was illegal because there was no good reason for doing so. Perhaps someone can come up with a good reason, but I certainly can’t.

Regarding the fourth question, on senior executives, I think it wouldn’t be appropriate to comment because you would be able to figure out who they were. Sorry.

Stephen M. Kohn, counsel to Howard Wilkinson and expert on whistle-blowing. – And just so you understand, although Danske Bank waived the non-disclosure agreement contractually for purposes of this testimony, they warned us that Mr Wilkinson could be charged criminally under bank secrecy laws, from Estonia or other countries involved, and they also warned us that he could be charged under data protection rules if he identified persons from the bank. So you’re in a situation where the lead whistle-blower is being told that he can’t identify the people involved – the customers – and he can’t identify the corporate officials who are involved.

Obviously this is a breakdown in law-enforcement authority. Which brings me to your question as to whether the rules should be harmonised. Absolutely yes! If one country can invoke bank secrecy to silence a whistle-blower, even though the money-laundering may have hit five or six or 10 different countries, that isn’t a good thing. I would say you should harmonise your laws, but you should harmonise them moving up: whichever nation has the toughest, I’d followed those.

Chair. – Colleagues, please do not ask so many questions, otherwise we won’t be able to handle them within the five-minute limit.

Gunnar Hökmark (PPE). – Thanks for this information. This whole thing is somewhat upsetting.

I have what I feel is a rather naive question. Most of us here are so-called politically exposed persons (PEPs), which means that when we, or our families, implement relatively small transactions, we get questions from the bank and the transaction is somehow stopped until they get more information. Compared to these figures we are talking about, the amounts in question are ridiculously small. What I would like to understand is – given that these rules exist in all banks, including in Danske Bank – how can it happen that banks are targeting these very, very small amounts? They seem to be checking on parliamentarians but not on money coming in from Russia, which is an obvious threat to our security.

I know there is no real concrete answer to my question, but within that question also lies another. Would some sort of Magnitsky legislation – targeting those who are doing the laundering as well – be a good way of fighting this problem, not only ensuring that banks need to do what they should be doing, but also ensuring we can penalise those who are doing the laundering?

Howard Wilkinson, Danske Bank whistle-blower. – I will perhaps take the first part and leave the second part for Mr Kohn.

I’m also at a loss as to how this could have happened. There were extensive money-laundering controls. To give you an example, you can actually go and open an account, but in the case of non-resident customers in Estonia every single customer had to be approved by the Client Acceptance Committee before the account could be opened. The Client Acceptance Committee failed – the question is why it failed.

There was an Anti-Money-Laundering Department that was properly staffed in Estonia. It communicated and worked with the Group Anti-Money-Laundering. I cannot understand how it can have failed. I am at a loss. I agree with you.
Surely it’s obvious to everybody that money from Russia is high-risk. But actually, according to some of the internal audit reports that are referenced, in Danske Estonia the whole non-resident business was actually considered to be rather low-risk in some reports.

I am at a loss.

Stephen M. Kohn, counsel to Howard Wilkinson and expert on whistle-blowing. – I would completely agree that laws like the Magnitsky Act are very helpful and should be implemented, but behind the law there has to exist the evidence to justify it. In order to get the evidence to justify it, you’re going to need the whistle-blower. So it’s not just a question of protecting someone after they’ve experienced retaliation. At that point, it’s one in a thousand, if that. And you can see from the Danske Bank case, over 10 to 15 years, many, many people, and one courageous person. There has to be a programme to bring it out.

This brings us to the second part, which Mr Wilkinson just testified to. You had a network of oversight. Banks have that – three levels of it in Estonia. They all failed. But I can tell you, from representing whistle-blowers for 34 years, that some of my best clients have been from those compliance departments: people who see the breakdown and then come out and report it. So you need a programme to get that. Without it, no-one is going to risk their livelihood, their job, their reputation, criminal prosecution – and we’ll find ourselves here again in a couple of years’ time.

Gunnar Hökmark (PPE). – To Mr Wilkinson, I am still naive – could you explain why it was easier for big oligarchs than for small grandmothers to transfer money?

Can you try to elaborate on that, because that is out of my reach to understand?

Howard Wilkinson, Danske Bank whistle-blower. – It’s a little bit leading to talk about oligarchs. There were these customers. According to the papers, there were proper controls that took into account the risks.

In reality, the proper controls existed only on paper.


En fait, nous parlons ici de lanceurs d’alerte et de protection des lanceurs d’alerte, ce qui percuta assez directement l’actualité de ce Parlement, puisque nous avons voté hier matin la position du Parlement européen sur le projet de directive sur la protection des lanceurs d’alerte. À ce titre, j’aurais aimé avoir un peu plus de précisions sur l’impact, au niveau personnel, de l’expérience que vous avez vécue, sur votre histoire et sur votre situation. D’ailleurs je voulais commencer par vous remercier pour votre présence ici, pour votre témoignage, dont on mesure bien qu’il s’exerce dans des conditions particulièrement difficiles.

Tout d’abord, le but du texte que nous étudions est de pénaliser les représailles, et je voulais savoir si vous aviez subi des représailles. Vous en avez évoqué certaines mais est-ce que vous pourriez nous donner un petit panorama de ce que vous avez subi comme pressions et représailles de la part de votre employeur?

Ensuite, dans votre cas, vous vous êtes limité au canal de signalement interne à l’organisation, pour les raisons que vous avez exposées, en particulier la signature de cet accord de confidentialité, de non-publicité. Est-ce que vous auriez apprécié de pouvoir vous saisir d’autres moyens de signalement, à savoir le recours à une autorité indépendante régulatrice du secteur ou, le cas échéant, le recours à la presse?
Enfin, dans votre cas particulier, la publicité autour de votre nom s’est faite contre votre volonté, à la suite – on va dire – de l’action d’entités que l’on peine à identifier, même si, dans vos propos, vous semblez laisser penser que cela venait de l’organisation bancaire à laquelle vous appartenez. Quel est l’impact de cette publicité sur vous? J’aimerais avoir votre regard, peut-être plus en tant que citoyen. Comment considérez-vous le fait que ces révélations ont été finalement rendues publiques, sont apparues dans la presse? Voyez-vous une utilité à ces révélations pour les citoyens en général et, en particulier, pour une assemblée comme la nôtre, dans sa réflexion sur de meilleures règles en matière de lutte contre l’évasion fiscale?

Howard Wilkinson, Danske Bank whistle-blower. – I hope I’ve got all the questions written down.

Let me start with the last one – about releasing my name. In 2017, the bank informed that there had been a whistle-blower. Now, when they informed that there had been a whistle-blower, what do you think happened? You’ve got a media storm: let’s find the whistle-blower. Actually, there were a couple of organisations – one Estonian one and one Danish one – who found who I was, and they didn’t publish my name. After the bank’s report, another Estonian newspaper published a list of the ten key questions and I think it was number six of these that was ‘what’s the name of the whistle-blower?’ Apparently, that was one of the most important things: not where the money went, but the name of the whistle-blower. Then, finally, another Estonian newspaper, without my permission, published my name. It’s a gross abuse of my human rights, it’s awful. What whistle-blower is ever going to want to come forward when that’s what they are going to face?

The trouble is that I believe in a free press and I’m torn here. I’m torn because I’ve seen so much fantastic reporting from Danish journalists and then I see some Estonian newspaper publish my name. I’m very torn here. The underlying principle is that there’s a massive difference between what’s in the public interest and what the public are interested in. I think it’s very important that journalists be responsible in understanding that difference.

Regarding reporting internally or externally, this is a very, very, important question. I think you need to distinguish between the financial services sector and, let’s say, a nurse. If you’re a nurse and you find wrongdoing, it’s pretty unlikely that you will want to go to the doctor who maybe is the one doing it. In those sorts of situations, it’s much more realistic that you would need to have an external entity to report wrongdoing to. In my case, it never even occurred to me that my warnings wouldn’t be investigated properly and then actioned appropriately. It never even occurred to me. I’m still shocked that it wasn’t, but I stand by saying that there was no reason to go externally because I should go internally first and externally after that.

Regarding my situation, in the United Kingdom, there’s an Act of Parliament, which has been in force for, I think, around 20 years, called PIDA, the Public Interest Disclosure Act. That means that absolutely any clause that prohibits reporting to the authorities is completely unenforceable. That’s a good model. To make a report externally, you need to be absolutely sure that nothing bad is going to happen to you because you have to remember that the bank is an economically rational actor. Even if the bank is 90% sure that if it went to court it would lose, it would still be rational for the bank to sue me because it would set an example to other potential whistle-blowers.

Regarding my personal situation, I don’t want to say too much about that. If my name hadn’t been released in the newspapers, I think I would have accepted that as being OK. It’s the release of my name that’s really intrusive and the fact that you had English journalists ringing up my mother-in-law in a small town in the middle of Estonia. I mean, how am I going to get a Christmas present this year?
Maite Pagazaurtundúa Ruiz (ALDE). – Muchísimas gracias a los dos. Queremos felicitarles a ambos por el ejemplo de integridad.

Cuando usted dice que ha habido un valiente en 10 o 15 años, lo primero que tenemos que decirle es que muchísimas gracias.

Lo segundo, aunque usted ha dicho que resulta tremendamente incómodo, en lo que se refiere a su situación personal, quien es excelente desde el punto de vista de la integridad debería ser la persona admirada, no formar parte de ninguna estigmatización o formar parte de una lista negra. En un mundo que funcione correctamente, en su entorno profesional usted sería demandado para altos cargos de responsabilidad y profesionales, por su integridad. Y las personas que estaban involucradas en una actividad de, en fin, que una mano no supiera lo que hace la otra y que no se enteraban de que podría haber elementos de riesgo en transferencias que venían desde Rusia, deberían ser removidas y no ser contratadas. ¿Cuál ha sido el resultado? Las personas involucradas, ¿han salido de la entidad bancaria?, ¿han tenido dificultades de inserción profesional? Y usted, que es el valiente, el íntegro, ha tenido dificultades. Son elementos objetivos y fácticos para darnos cuenta de cuánto nos falta. Eso, por una parte.

Y, por otra parte, nosotros estamos trabajando en cómo ayudar, en cómo mejorar las condiciones de los denunciantes. Nos ha dado una pista la persona que le acompaña: recompensar a los denunciantes. Es algo que tenemos que tomar en consideración.

Howard Wilkinson, Danske Bank whistle-blower. – If I could perhaps make a little comment and then leave Steve to wrap up.

I don’t want you to think about me when you’re thinking about whistle-blowers. I want you to think about a person who there might have been in Danske Bank Estonia, and let’s call this person Tia. Let’s talk about a Tia who’s been working in Danske Bank Estonia for a few years. She might work in Danske Estonia, maybe she works in a nursing home or a hospital or any company. Now, this lady is a single mother and she’s got two children. She lives in a small apartment on the outskirts of Tallinn. She’s got a mortgage. This lady finds that there’s something wrong in Danske Bank. She’s not British – who can in the end just say ‘whatever’ and move. She can’t move. She’s stuck in Estonia. So what does she do when she knows that there’s something wrong? She knows what happens if she reports it internally. Maybe she won’t be fired, but there are always redundancies and she knows very well that she’ll be top of the list and she’ll be out. Then when she’s made redundant, she’ll apply for a job in another bank. But what are the other banks going to do? The first thing they do is call up the bank she used to work for. She’s blacklisted. So, she says, ‘OK, then if that happens, I’ll have to go and get a job in another industry’. The problem is that the financial sector pays 25-30% more than any other sector, and then she thinks very hard: ‘Hang on a second. If I have to go and work in another sector, I can’t afford my mortgage.’ She can’t afford to be a whistle-blower. With the whistle-blowing directive that’s under consideration, you need only think about one person. Think about the Tias in Europe who are unable to afford to take the chance of being whistle-blowers. It’s not whether it works for me; it’s whether it works for them.

Stephen M. Kohn, counsel to Howard Wilkinson and expert on whistle-blowing. – There are three best practices that this committee could recommend and these can be implemented for the financial services sector.

The first is a highly professional governmental whistle-blower office where the staff is sensitised to the needs of whistle-blowers and can handle their information professionally.
The second is the right to confidentiality and anonymity. As you can see, if your name gets out you won’t get a job. Probably the number one detriment is the fear that you will lose employment or lose opportunity, which you will.

Third is you have to rethink the compensation model. Right now, in most laws, a whistle-blower is compensated in direct relationship to the harm they suffer. It’s like – are we out in some world where you whip someone and then hand him some dollars? It makes no sense to predicate a fraud detection regime and programme on the suffering of your witnesses. It makes no sense.

What you want to do is convert the model so that you get compensation for the quality of your information: how your information serves the public interest and can directly result in the successful prosecution of wrongdoers.

If you have the confidentiality and those incentives then you have a successful programme.

1-023-0000

Stelios Kouloglou (GUE/NGL), – Mr Kohn, how important is anonymity in whistle-blower cases? In my country, in Greece, there is a scandal which is being investigated right now, for instance. The people that blew the whistle are anonymous, but they are attacked so much with every word you can imagine – as if they are thugs, criminals, liars – by the people that have allegedly been involved in the scandal. So is it important to keep anonymity for whistle-blowers? This is one question.

The other question is for Mr Wilkinson. In your testimony in the Danish Parliament, you talked about three other banks involved in the processing of billions of dollars, so everybody is talking about Deutsche Bank, JP Morgan and the Bank of America. Does your non-disclosure agreement (NDA) cover this disclosure of the names of the banks?

1-024-0000

Stephen M. Kohn, counsel to Howard Wilkinson and expert on whistle-blowing, – In terms of anonymity and confidentiality, it’s absolutely essential. When the United States was debating the Dodd-Frank Act, which I helped the Senate Committee with and worked on with that Committee, the issue of retaliation came up and the Committee staff had it right: they said unless a whistle-blower can come in anonymously, they are toast. They will never work again on Wall Street. They knew that from their years of investigation, and that was music to my ears. The creation of a law that actually permitted effective, anonymous and confidential whistle-blowing for the first time, that’s a model.

In regard to what’s going on in Greece, for which I have some knowledge – I represent many European whistle-blowers – I can tell you right now the fear in Europe is the disclosure of identity. I worked with a major corporate executive for 10 months just trying to explain to them that in the United States you can go in anonymously. The fear of being exposed is monumental.

1-025-0000

Howard Wilkinson, Danske Bank whistle-blower. – Regarding the second question, just to be clear: as far as it’s able, Danske Bank has waived its rights under the agreement but it cannot waive all rights. Danske Bank can’t waive the rights of a bank that I might know the name of. You named three banks. As you saw in my slide, I named no banks, and that’s the way it is because Danske Bank can’t waive those banks’ rights to anonymity.

1-026-0000

Stephen M. Kohn, counsel to Howard Wilkinson and expert on whistle-blowing. – The criminal gets protection of their identity. The whistle-blower’s identity is leaked, and there is nothing he can do about it.
Max Andersson (Verts/ALE). – Thank you for coming forward, Mr Wilkinson, and doing the right thing.

In Sweden we have a law, enshrined in the Constitution, that says that at least the public authorities are forbidden to try to find out the identity of whistle-blowers. I think that’s a very interesting model that others should also consider.

We’re trying, here in the European Parliament, to strengthen the protection for whistle-blowers. Yesterday we ended up with a position that would strengthen that protection considerably. Now the text is going into negotiations with the Council. But there are those who want to insist on mandatory internal reporting channels.

Mr Wilkinson, given your experience, do you think it’s a good idea – an efficient way of doing things – to have mandatory reporting channels? That’s my first question.

I also have a second question, picking up on your point about the financial authorities’ job being to protect Danske Bank. To me, that sounds like a case of regulatory capture – the well-known phenomenon whereby regulatory agencies become captured by the very industries they are supposed to regulate. Do you have any other ideas how to deal with the regulatory chapter, apart from removing home-country bias?

Howard Wilkinson, Danske Bank whistle-blower. – Thanks for the questions. Steve has written what my answer should be to the first one. The answer I’m supposed to say is ‘no’, but I think it’s more nuanced than that. I think it depends on the industry.

In my case, it was inconceivable that I would suddenly, in December, go straight to the Estonian authorities without going internally. To me that was inconceivable, but that was because I trusted the bank. For a different person, in a different situation or in a different industry – and I think a nurse or someone working in a hospital is a very good example – there’s no way. You have to report it externally.

So, there needs to be a little bit of nuance. It’s desirable and, if it’s possible, you should try to report it internally first, but I don’t think you should ever say it has to be reported internally. People should try because whistle-blowers are good employees: if whistle-blowers expect to be listened to, there’s no reason not to try. But ultimately a whistle-blower must have the right to be able to go externally.

Regarding the second question, you’re obviously a much better economist than me. I called it ‘affectionate caress’ regulation, you called it regulatory capture. In the case of money laundering, again I’ve got mixed feelings. I’m British and we’re not going to be here all that much longer, so for me to start talking about ‘ever closer union’ is a bit strange. I think, in the case of money laundering, the debate about whether action against money laundering needs to be organised much more centrally is a very important one, but a lot of my friends would be giving me very strange looks if I went home waving the flag for ever closer union. Anti-money-laundering centralisation will take away the home-country bias.

Stephen M. Kohn, counsel to Howard Wilkinson and expert on whistle-blowing. – I would just like to add that I also work with an NGO, the National Whistle-blower Center. We’ve taken a position on the proposed directive. It has a lot of good features but if it requires mandatory internal reporting we would be forced publicly to oppose it. In the United States it is a criminal obstruction of justice for any person to interfere with the disclosure of a potential crime to law enforcement.
If you see a person out in the street getting mugged, nobody says ‘Call their parents’ – you call the cops! If you see a crime, you call the police and there should be nothing wrong with it. Any rule, procedure or policy that interferes with the fundamental human right to report crimes to the proper authorities, we would have to oppose. And it would break my heart if we had to publicly oppose something as good as the numerous great features that are in that directive.

1-030-0000
Gilles Lebreton (ENF). – Je remercie les deux témoins d’être venus nous apporter beaucoup de renseignements sur ce scandale de la banque danoise Danske Bank.

J’ai quelques questions à poser.

Tout d’abord, je suis surpris de voir que ce scandale de blanchiment d’argent concerne un pays, le Danemark, qui avait pourtant transposé les quatre directives européennes concernant la lutte contre le blanchiment. Il y a donc une responsabilité du Danemark, qui a failli à ses obligations de surveillance.

J’aimerais poser cette question à nos deux orateurs: s’agit-il d’une simple négligence de la part de ce pays ou bien est-ce que cela représente une forme de complicité, de volonté de laisser faire les choses?

Deuxième question: quelle sanction a été encourue par la Danske Bank? C’est important de le savoir et, personnellement, j’aimerais savoir très clairement si cette sanction est supérieure au profit retiré des transactions litigieuses. Si ce n’est pas le cas, cela n’est évidemment pas très dissuasif.

Pour finir, troisième et dernière question: je n’ai pas très bien compris, vous avez dit que vous aviez accepté vingt mille euros qui vous auraient été donnés par cette banque. Alors finalement, pourquoi? Était-ce une récompense, une compensation pour le préjudice que vous avez subi ou bien peut-être une tentative de vous empêcher de continuer à alerter l’opinion publique?

1-031-0000
Howard Wilkinson, Danske Bank whistle-blower. – Thank you for the questions, I will take the last one first – regarding the EUR 20 000.

The senior executive turned up with an agreement which included an ex-gratia payment. When I objected to the agreement, and in particular to the non-disclosure agreement, the money went up if I signed it there and then. I hope that makes it clear.

It’s very difficult for me to speculate on what exactly was going on in the Danish Financial Services Authority (FSA). What I said to the Danish Parliament, and what I say here, is that, so far, the only people who have investigated the Danish FSA are the Danish FSA. I think there’s a need for an independent investigation.

Now I know that the Commission has referred the matter to the EBA. It’s well beyond my level of expertise to speculate on what investigative powers the EBA has but I think there is an obligation for someone – the obvious candidate being the Danish Government – to conduct a full and independent investigation into exactly what happened in the Danish FSA with regard to the regulation of Danske Bank and Estonia. And that investigation should look at exactly the sort of issues you mentioned, regarding whether there was misconduct.

Regarding what penalty Danske Bank has suffered – in May 2018 the Danish FSA came out with a report and the punishment was eight slapped wrists!
There are, of course, plenty of investigations ongoing, and who knows what will happen, but to date Danske Bank Denmark has received eight slapped wrists from the Danish FSA. So far, that is the sum of the punishment.

Stephen M. Kohn, counsel to Howard Wilkinson and expert on whistle-blowing. – With regard to the question concerning negligence or complicity, I have represented whistle-blowers for 34 years and what I have found is one thread running through all of the cases and the court decisions. It’s not like there’s an evil group that’s conspiring to rip everyone off, but money does strange things, and most of the whistle-blower cases I have seen are what I call greed driven. At some point you make a lot of money, you get better returns, and you go into a greed-driven situation.

So it’s not just about negligence or complicity. It’s a greed-driven reality that you need adequate tools to police.

As to what sanctions should the bank face, in looking at various European cases I am struck that in many instances the sanctions are very low.

I would recommend that this committee officially adopt a discouragement model that the United States uses in many of our anti-fraud laws, including the Foreign Corrupt Practices Act in which there is a calculation of how much profit a company made from the legal scheme, and every penny of profit must be given back. That is on top of any fine, sanction or penalty. There has to be a hammer: no profit can be derived from criminal activity.

Dariusz Rosati (PPE). – Thank you, gentlemen, for being with us this morning.

Let me come back to the questions that have been asked already in order for me to better understand the whole case. I understand that the suspicious activities that are something we know ex post have been going on for – I don’t know – 8 years or so in the Danske Bank Estonia. The number of transactions considered suspicious totals 160 billion out of 230 billion altogether.

How was it possible that – apart from you, Mr Wilkinson, and your stand on this – that none of the other officials somehow raised a flag to point out these suspicious transactions? How was it possible that the Estonian FIU (Financial Intelligence Unit) or the Danske FIU has not done anything to at least explain these large flows? Was it because all Estonian banks have processed these amounts of money, or was it something exceptional in the case of the Danske Bank? If it was exceptional, how come it was possible that it did not attract the attention of the authorities responsible for anti-money laundering?

That is one question. The second, to your counsel, Mr Wilkinson: how would you compare the European system of anti-money laundering investigation and assessment with the US system? To my mind – and I think this is shared here across this room, the US authorities have been much more efficient, much more effective actually, in identifying all these cases of fraud and this is something that we don’t feel very comfortable with.

The indications have come from the other side of the Atlantic – to do something with these banks. So, what is it we could emulate or copy from the US system into the European system of anti-money laundering in order to make the system more effective?

Howard Wilkinson, Danske Bank whistle-blower. – I’ll take your first couple of questions. It’s difficult to comment on the conduct of people at a relatively senior level within the bank, but I refer you back to the example I gave of a lady – perhaps there was a lady called Tia. It’s not a
real person, but I strongly believe that there were a number of more junior people in the branch who knew – perhaps not the extent (I didn’t know the extent!) – but knew that there were suspicious things, but because of the set-up (the Tia example I described), a Tia would never have come forward as a whistle-blower.

As regards the more senior people, I don’t know. As regards the role of the regulators and the Estonian FIU (Financial Intelligence Unit), as I said in answer to a previous question, I think is important that there be an independent investigation into the Danish FSA (Financial Supervisory Authority).

Let’s talk about the Estonian FIU. Last time I watched a hearing, you’d invited some FIU and they didn’t show, and the reality is, if they did show, all they’d say is ‘sorry, can’t tell you because it’s secret’. That’s the reality.

When you’re in Estonia, please ask the question, but I’m fairly sure the answer will be ‘can’t discuss specific cases’. I don’t know how anyone does actually control an FIU, but clearly there’s the need for someone – perhaps the most likely candidate would be the Estonian Government – to organise an independent investigation into what on earth the FIU in Estonia did during this period. In ‘FIU’, the ‘I’ stands for Intelligence, but I’m not sure I’m seeing so much of that.

Stephen M. Kohn, counsel to Howard Wilkinson and expert on whistle-blowing. – In regard to the US model, I would highly recommend that you look at the US laws – in my written submission, I cite some of them. These laws can be implemented in any advanced democracy, within the European Union and within the countries, and they work.

The other thing I just want to emphasise is that a majority of my clients now come from Europe and what I’ve discovered is that many people want to expose wrongdoing, but they don’t have a system in place that makes them feel that it’s practical and possible, safe and secure.

The other thing to keep in mind is that no matter what I tell a prospective whistle-blower and that’s who I’m looking at now – the source who has information – there is a need to bring them out. The fear they have of losing everything: I can sit and go up and down about the laws protecting them: confidentiality, you can get a reward ... I can tell them a lot of things, but that fear is something that is very hard to overcome. It can only be overcome with trust and experience. If you noticed that one slide I showed where the reporting, the money and the effective implementation of these laws went up over time – it’ll take time, it’ll take trust, but you have to put yourself in the shoes of someone who is fearing losing their entire career they’ve built up.

You have to model your programmes on that. I don’t want to go into all the details, but the one thing that we have an advantage in the United States is that we had our first whistle-blower laws about 50 years ago. Thirty-three years ago, we went to what I would call the ‘modern model’ and it worked. Then we took that model from government contracting and we applied it to tax. It worked incredibly well. Then we took it to securities and commodities’ exchanges and foreign corrupt practices. Every regulator who’s been monitoring the progress of these laws has come out publicly and said they are phenomenally successful. So, we have some models and I would urge you to look at them and start implementation.

Ivari Padar (S&D). – Suur tänu, härra Wilkinson, et see teema tänasel juhul siin laual on. Ja mida me näeme – me näeme, et me oleme minevikus väga sügavalt üle hinnanud seda, kuidas me Euroopa Liidus oleme suutnud rahapesu vastu võidelda, kuidas me oleme suutnud seda koordinatsiooni teha. Tuleb välja, et see koordinatsioon on olnud hästi nõrk, ja on selge, et siin
Howard Wilkinson, Danske Bank whistle-blower. – Thank you very much for the question. There’s only one regulator who actually comes out with any credit, or perhaps I should say ‘half a regulator’ because, as I showed in my slide, there’s a clear distinction between the performance of the Estonian FSA (Financial Supervision Authority) prior to 2014 and the performance of the Estonian FSA after 2014.

The post-2014 FSA is the only regulator that comes out with any credit because they were the ones who actually forced the closedown of the business. In fact, after I left, I remember, in the summer of 2014, a former colleague telling me, ‘You know, something has happened with the FSA: they sent some people and we’re a bit scared of them. They actually know what they’re talking about’. Those are the kind of regulators you actually need. It’s very difficult for me to comment on who did what, basically because I left in April 2014, so it’s pretty much what I read. The Estonian FSA post-2014 deserves a lot of credit because it wasn’t as though they got a lot of help from anyone else.

Chair. – I’d like to thank both speakers for the valuable information they shared with us. On top of that, I’d like to thank Mr Kohn for his assistance to Mr Wilkinson. I’d like to express my appreciation for what Mr Wilkinson has done – the revelation – because, if it were not for this, the money laundering would apparently have gone unnoticed by the outside world, and in fact it was neglected for a long time even when Mr Wilkinson blew the whistle.

He has clearly made a personal sacrifice. He lives under stress, while those who did the money laundering may, as we speak, be sporting their yachts and jets. To some extent it is a Kafkaesque situation and certainly not a reflection of the world we would like to see.

I can assure you that, at least in this committee, we will spare no effort to tighten the screws on money laundering. Later on we will speak with the European Banking Authority (EBA) and the Commission on the possibility of setting up an EU body to investigate money laundering. We will keep on working on the protection of whistle-blowers because, as has been said, they do the right thing – as you did Mr Wilkinson. Thank you very much.

(Appause)

2. PANEL 2 : MONEY LAUNDERING IN THE EU BANKING SECTOR: WHAT IS FAILING?

Chair. – We will start the second panel of this first part of today’s hearing of the TAX3 Committee. The topic is again money laundering in the EU banking sector, but this time we have here representatives of banks.

I’d like to welcome Diederik van Wassenaer, who is Global Head of Regulatory and International Affairs at ING Bank, Jesper Nielsen, who is interim CEO of Danske Bank, and Åsa Arffman, Chief Legal Counsel of the Swedish Bankers’ Association.
Each speaker will have a maximum of seven minutes for his or her presentation. I’d like to ask Mr van Wassenaer, from ING, to start. The floor is yours.

Diederik van Wassenaer, Global Head of Regulatory and International Affairs, ING Bank. – Chair, I would like to thank you for the invitation to address this hearing.

As I am sure you are aware, on 1 September 2018, ING entered into a settlement agreement with the Dutch Public Prosecution Service following its investigations concerning various requirements in relation to the prevention of money laundering. Under the terms of this agreement, ING agreed to pay a fine of EUR 675 million and also an amount of EUR 100 million as disgorgement. It also had consequences for our management, as Koos Timmermans, our Chief Financial Officer, will step down from his position as a member of the Executive Board of the ING Group.

ING acknowledged serious shortcomings in the execution of customer due diligence and transaction monitoring to prevent financial economic crime at ING The Netherlands in the periods investigated, which were between 2010 and 2016. We take full responsibility for this and we deeply regret what has happened.

For the purpose of today’s hearing, however, I will focus on what we have learned from the past years and what we have initiated to avoid repetition of such serious shortcomings. It is clear that the way ING The Netherlands treated client on-boarding and client activity monitoring was not acceptable and we have to do much better.

Meeting the highest standards regarding compliance with legislation and regulations has top priority within ING and therefore we will ensure that our systems and mindset are the right ones to perform the gatekeeper role in the way that is expected of us.

ING has fully cooperated with the investigations, and it started taking remedial action to reinforce its governance and its anti-money-laundering compliance policies as from 2016. These remedial measures have been discussed with ING’s home-country regulator, the Dutch Central Bank (DNB). In the investigations, no evidence or indications were found that our employees had actively cooperated with clients who used, or may have used, our banking services for potentially criminal activities. Nor were there indications of our employees having received any personal gains.

Although no evidence regarding personnel-specific criminal behaviour was established, evidently the overall situation was very serious and therefore ING, after making an internal assessment, decided to initiate measures against a number of employees in senior management positions who have broader responsibility for the safeguarding and execution of Know Your Customer (KYC) policies and procedures in the Netherlands.

We are now giving top priority to a number of robust measures to strengthen our compliance and risk management and to support a strong risk culture along the haul-back. We take this very seriously and we are committed to making further improvements to ensure we can play a role in protecting the integrity of the financial system to the fullest possible extent. Please allow me to elaborate on some of the action we are taking.

First of all, there is the KYC Anti-Money-Laundering (AML) Enhancement Programme, which is aimed at ensuring compliance in the area of customer due diligence and customer activity monitoring: it involves improving the management of customer data, in particular, and also the effectiveness of management oversight over all our KYC activities.
Next to that, we are introducing bank-wide structural solutions in terms of clearer policies and work instructions, better tools and applications, enhanced transaction monitoring, including through the use of new techniques like artificial intelligence, much stricter governance and the introduction of client integrity risk committees chaired by compliance-risk management – sharpening the mindset and continuing with awareness measures in collaboration with public institutions and other financial institutions.

In doing so, we have increased the compliance-related staff for ING The Netherlands from 150 people in 2010 to about 450 employees today, and globally the number has increased from 600 to 1,800 employees.

Lastly, we have established a Global KYC Centre. Our KYC policies are based on the relevant Dutch laws and regulations and we are subject to the supervisory standards set by DNB in the Netherlands. All these are reflected in our own global minimum standards, to which we add applicable local requirements when these are stricter.

Our own internal actions are the most urgent and important for us. However, we believe it would also be beneficial to improve the existing regulatory framework. Firstly, we believe it is necessary to achieve structural improvements through enhanced cooperation within the private sector, as well as through public/private partnerships.

As financial crimes are often cross-institution and cross-border, we should be able to exchange inter-bank information – for instance, to ensure that a client banned by one institution will not be able to do business with another. Also, criminals tend to use a multitude of banks for their activities, but each single bank sees only its own fraction of the entire transaction chain. Sharing transaction information between banks could help to build a picture of the whole chain. The legal framework should be designed to make it possible to share this kind of information.

A key change being proposed as part of the revision for the Fifth Anti-money Laundering Directive would allow law enforcement agencies to share information on bank lines more freely so that illicit networks could be detected and banks warned at an early stage.

Centralising AML supervisory powers at EU level, via a dedicated Europe-wide AML supervisor, should also be considered. A single authority would be best placed to connect the dots and therefore protect financial stability, and its impact on the integrity of the financial system, and in this respect we welcome the Commission’s recent proposal to make changes to the current European AML supervisory framework. Given the cross-border nature of money laundering and terrorism financing, close cooperation between the relevant authorities is also of the utmost importance.

Jesper Nielsen, interim CEO, Danske Bank. – Chair, thank you for the opportunity to appear here today. My name is Jesper Nielsen. I’m head of Danske Bank’s Danish operations and, for the past month and a half, I’ve been interim CEO of Danske Bank.

I stand here today because Danske Bank in Estonia, from 2007 to 2015, had customers whom we did not know sufficiently well and whom we should never have accepted as customers. Over this period of time, a total of 15,000 non-resident customers carried out almost 9.5 million transactions, adding up to a total money flow of about EUR 200 billion. I’m here to answer your questions and to try to explain how it could have happened and what lessons we have learned. But let me start by underlining that the explanations I offer today should not be seen as excuses. What happened should never have happened. It is unacceptable and we take full responsibility.
So how could it happen? That’s the question that, last year, Danske Bank commissioned a law firm to answer. It’s been crucial for us to get to the bottom of the issue and we have aimed for a full investigation, to understand fully what happened so that we can take all necessary initiatives to prevent anything similar from ever happening again. It’s important for me to state that this investigation was never intended to replace investigations by the authorities, and the material from the investigation is, of course, available for relevant authorities.

In short, the story is that Danske Bank had a portfolio of non-resident customers, customers who were foreign nationals in Estonia and, although we were aware that servicing such customers involved a high level of risk, we were equally convinced that strong anti-money-laundering (AML) procedures mitigated those risks. That conviction turned out to be ill-founded.

The problems were due to a number of shortcomings and the investigation highlights the following. In general, not enough attention was paid to the risk of financial crime in the Estonian branch, which operated with too much autonomy. The Estonian branch was not integrated with the group’s IT platform, which made it difficult to monitor transactions at group level. The control functions in Estonia were not sufficiently independent of the local management. Internal warnings and red flags were not properly understood at group level. Insufficient understanding of the risks meant that the issues were generally reported internally with assurances that things were under control. Those assurances obviously turned out to be false. There was possible collusion between customers and employees at the Estonian branch. In short, a series of failures in Estonia and at group level allowed the problems to occur and persist.

What happened is now having severe consequences for Danske Bank. The former CEO, Thomas Borgen, has resigned, the Chairman of the Board will step down and a number of employees, including at management level, have had their contracts with Danske Bank terminated. Forty-two employees from the Estonian branch have been reported to the authorities, eight of them directly to the police. We have closed down the non-resident portfolio in Estonia and we have decided to focus on our core markets, servicing primarily customers whose businesses we fundamentally understand.

We have taken a number of initiatives to strengthen our position in the fight against money laundering and financial crimes. These initiatives include the following. We have substantially strengthened all three lines of defence: we have enhanced our governance and oversight and we have quadrupled the number of employees in our organisation working with AML. We are investigating significant resources in automating business procedures and operating the IT systems that support these procedures. We are also improving the know-your-customer (KYC) procedures for welcoming new customers at Danske Bank. We will continue to invest in a stronger and more efficient AML set-up and we are committed to learning and sharing the full lessons of our failures in this case.

I welcome your questions and your scrutiny, with the only reservation that there is certain information, such as customer-specific details and information regarding individuals, on which, for legal reasons, I am unable to comment. This includes the whistle-blower. For good reasons a whistle-blower enjoys a high degree of protection under the law. That applies even if a whistle-blower chooses to disclose his or her own identity. We take this very seriously and, in order not to discourage or deter any whistle-blowers in the future, we will not confirm or deny the identity of a whistle-blower. But the whistle-blower is free to speak. We have released the person in question from all contractual duties of confidentiality in relation to Danske Bank. I also want to stress that no employees in Danske Bank are prevented by their contract from talking to the police or other authorities if they have knowledge about suspicious matters.
Danske Bank is Denmark’s biggest lender and one of the largest banks in the Nordics. We are a Nordic bank with strong local roots, and bridges to the rest of the world. What has happened does not reflect the bank that we have been for the past 147 years and it does not reflect the bank that we want to be, moving forward. But we recognise that we have a huge task ahead of us in regaining your trust and the public’s trust, and we are determined to regain that trust. Thank you for your attention.


Det handlar huvudsakligen om lagstiftning på finansområdet men även skatter, bokföring, konsumentrelationer, civilrätt, insolvens och penningtvätt omfattas av vårt arbetsområde. Förutom att svara på konsultationer bidrar vi också i lagstiftningsarbetet genom att delta i olika referensgrupper som experter och via dialogmöte med berörda myndigheter.

En annan viktig uppgift för oss som branschorganisation är att sprida kunskap om bankernas viktiga roll för tillväxt och välfärd i samhället. Inom detta område utgör också konsumentinformation en viktig del. Vi publicerar informationsblad till bankkunder om till exempel hur man blir en bankkund, varför banken måste ställa frågor, checklista för hur man byter bank och vad en politiskt utsatt person är för något. Vår ambition är att främja en sund utveckling av det svenska banksystemet.


och dess tillämpning. Den senaste konferensen hölls i våras och då hade 200 medlemmar som deltog.

För att ytterligare hjälpa våra medlemmar har föreningen tillsammans med sex andra branschorganisationer på finansmarknaden bildat Svenska institutet mot penningtvätt, Simpt. Simpt bildades 2016 och ändamålet är att ge vägledning för finansiella företag i Sverige när det gäller tolkning och tillämpning av regler och åtgärder för att förhindra penningtvätt. Syftet är att etablera en god praxis och att skapa rätt förutsättningar för effektivare tillämpning av reglerna.

Penningtvätt och finansiering av terrorism är emellertid en internationell företeelse och vi undersöker nu för närvarande möjligheten att samarbeta med de nordiska bankföreningarna på detta område.

Svenska Bankföreningen uppskattar arbetet som sker i detta utskott i kampen mot penningtvätt. Tack än en gång för inbjudan och står självklart till förfogande för eventuella frågor.

Chair. – I’d just like to point out that, as we have representatives of northern EU countries here today, that doesn’t mean that we are not also looking south. We had speakers from those countries here before, and I’m afraid it just underlines the fact that some problems are geographically well balanced.

Now we will start the exchange of views with Members, with one minute for the question and four minutes for the answer, starting with Luděk Niedermayer, co-rapporteur for the PPE Group.

Luděk Niedermayer (PPE). – Chair, I would like to thank all the speakers for being here. I will address the interim CEO of Danske Bank.

In your report on the internal investigation, Mr Nielsen, we can read that the Estonian branch operated too independently from the rest of the group, with its own culture and system. You have mentioned systems, but I want to stress the culture. Let me speculate a little because it seems logical that this different culture was allowed by the high profitability of the operation and also that the local management was rewarded for this high profitability.

So I wonder – and I am talking about the past because I trust your genuine effort to make things better – to what extent you think that high profitability was seriously discussed at top management level, or did the bankers believe that markets are, to some extent, efficient so that actually, to gain substantial profit, you need to take substantial risks. To what extent was this discussed, and, generally speaking, is attention to profit units or parts of the bank that are over-performing not at least as important as attention to those units that are underperforming against the bank’s average?

I guess it’s not just about the issue of the risk in the case of money laundering, and it should be a general feature. To what extent would you like to make sure that the remuneration system within the bank does not reward excessive risk-taking that is difficult to manage from the point of view of the institution’s risk profile?

Jesper Nielsen, interim CEO, Danske Bank. – Thank you for recognising our efforts at this point. From a cultural perspective, I think we have a lot of work to do in terms of culture, not just in Estonia but also in the bank generally, making sure that we have a culture where information flows completely freely.
With regard to high profitability, and whether that has been a cause of problems, and a discussion about the prevention of money laundering, and whether those two things are opposites, I can confirm that is not the case. If you look at the nine years in question, we made EUR 1.5 billion on that portfolio, and in the same period of time we made EUR 430 billion in Danske Bank. This has never had the impact of making a real difference in terms of Danske Bank’s overall result. If you look locally, that might be a different question.

In terms of our reward system and remuneration system, as it is today, I think we have a very high portion of remuneration based on following the risk procedures. So we are very confident that we don’t encourage behaviour that leads to misconduct, both in terms of customers and internally in terms of risks.


Jesper Nielsen, interim CEO, Danske Bank. – Thank you for your questions. I think, yes, it’s probably fair to say that we would react faster with the knowledge that we have today. But let me go back a little bit. These are amounts and numbers of transactions that we should have found out about – there is no doubt about that – and we see a complete collapse in terms of surveillance and reporting from the three lines of defence.

In terms of consequences in Copenhagen, we have had both terminations of contracts and resignations on the back of this, in Copenhagen as well. Actually quite a number – I can’t remember the exact number. But it’s for very different reasons.

If you look at the things we have reported in Estonia, they are due to suspicious activities in terms of collusion with customers outside of the bank. In terms of Denmark, there are no indications that we willingly let any information slip out of the way, or willingly accepted that this went on, or collaborated or withheld information of any kind.

There are two very different sets of circumstances in Estonia and in head office. But that does not make it right that we didn’t react fast enough back in 2013 and 2014.
With hindsight, when you look at the events and the chain of warnings we had, we should definitely have been better at putting them together. I think that’s also why people have assumed management responsibility and have left the bank freely as well.

So I think that answers your questions.

1-048-0000

**Jeppe Kofod (S&D),** – Briefly, you also state in your written answer to the committee that you know that the portfolio of non-resident customers contained high-risk customers and high-risk business, and you didn’t take that into account: you believed that the policy in place was sufficient to prevent money laundering.

So I wonder – because everybody knows that these customers, for example Russian customers, are high-risk customers – why did you believe that these very profitable customers did not pose a serious threat of money laundering, and why did you simply believe in some policies intended to prevent it? I don’t understand. Everyone knows, the financial sector knows, that this phenomenon – not only in Estonia but all over, after the end of the Cold War – was a big threat. There was money laundering from the former Soviet Union and from Russia. There was a big threat.

1-049-0000

**Jesper Nielsen, interim CEO, Danske Bank.** – I think that’s also what we wonder. And it’s a fair question. We had already had a warning back in 2007.

When you look at the explanation – and it’s important for me to say again that it’s not an excuse – and when you look back, and this is also in our report, there was actually a firm belief at group level that we had good procedures around anti-money-laundering policy in Estonia. In fact, in some cases, Estonia was highlighted as the best-practising group in terms of money-laundering prevention – which obviously seems totally weird when we look at it in the light of what we know today.

I share the disbelief in terms of what happened. We did not check well enough, and that takes us back to the three lines of defence collapsing and to being much too close to local management.

1-050-0000

**Dariusz Rosati (PPE).** – Mr Nielsen, we are faced with a situation in which a branch of a renowned bank in Estonia was involved, for eight years, in proceedings that practically boiled down to money laundering on an enormous scale.

You admitted in your introductory remarks that mistakes were made here and there, but basically it was to a large extent attributable to the fact that the Estonian branch enjoyed considerable independence – that there was a different corporate culture in that country, and that the IT systems were different. This is not very convincing, I must say, because to continue this kind of criminal activity for eight years there must have been not just negligence at one or another level of management, and not just complacency. I don’t know. There must have been some kind of organised system, on the one hand, to make sure that information was not leaking out about all those transfers, and, at different levels of management – compliance, risk assessment, I don’t know, the executive level – people must have been somehow not interested in looking into risks connected with suspicious transactions which were being carried out.

What is your opinion of that? To what extent must it have been a result of a collusion within the bank there, perhaps with the participation of some employees in the headquarters as well. You said that some of them have left the bank, and that contracts have been terminated. This is all OK, but to what extent, given that these are criminal activities, will the people concerned be placed under criminal investigation?
That is one thing. And maybe one more point. Why, after all these years, was there only one man, one whistle-blower, who decided to speak up and to point out all these malpractices, while all the other employees who must have known about all this, or at least suspected it, somehow kept silent? What is the reason for that and what do you want to do in your bank in order to change this culture of conspiracy?

Secondly, what would you suggest to us in the European Parliament: how could we improve the system of anti-money-laundering controls and investigations here in the European Union in order to react faster to such cases?

Jesper Nielsen, interim CEO, Danske Bank. – There are a few things here. If we step back a little, I think it’s important to say that, obviously, we can only identify suspicious activity and suspicious transactions; it is now up to the authorities to determine the exact level of money laundering. The same goes for what happens to the 42 people who have now been reported to the authorities and the eight who have been directed to the police. Obviously we did that because we saw signs of internal collusion and suspicious activity that need to be investigated. The fact we have done that, and it’s part of the report, obviously means it is one of the things which, we think, had a significant impact in terms of how this could fly under the radar.

Looking at the events from 2007 (we had a warning in 2007 from the Russian Central Bank) to 2015 or, in fairness, until 2013 – and this is obviously wrong in hindsight, and I recognise that, but just to explain what the perception was in the bank – internal audit reports, reports from compliance, all gave the green light in terms of financial crime in our Estonian banks and confirmed the belief that we had sufficient controls on the non-resident portfolio in Estonia. That obviously proved to be very wrong. Then, when things were brought up by the whistle-blower and other internal reports, and in reports by the Estonian Financial Services Authority, it’s fair to say that we reacted way too slowly on that and with too little force in terms of actually cleaning up. That took us way too long.

With hindsight, I think that, having had a period of time where you have had the green light, you may be inclined to take extra time to investigate things. That’s not an excuse, just an attempt to say what probably happened internally in the bank.

In terms of culture, you’re right. We have a big task in this regard and it basically starts with our being willing to speak openly about this case with you, with our customers and with our stakeholders – about what we have learned from this case and what actually happened – and to share as much as we can regarding that. We are, of course, sharing everything with the authorities.

I think that what we need to change, first and foremost, when you look through the report from the bank, is the culture of being too positive when you report through the hierarchy of the bank. That starts with me. It starts with top management and I can promise you that it has already started.

In terms of what you can do to help, ING gave a very good introduction to some of the most important things: namely, how we create visibility across the chain of events in anti-money-laundering procedures and how, between authorities and bank, we enable the disclosure of certain kinds of data and help each other in that way actually to stop criminals. That’s one of the most important points.

Paul Tang (S&D). – Dank aan Diederik van Wassenaer dat hij is gekomen, dat stelt deze commissie op prijs.
Meneer Wassenaer, u zegt dat er een Europese witwasautoriteit moeten komen die de punten verbindt. Dat is een van de pleidooien die u houdt. Maar het probleem was natuurlijk dat er geen punten waren. ING meldde verdachte transacties niet. Er waren dus geen punten om te verbinden. Het feitenrelaas van het Openbaar Ministerie is tamelijk dodelijk. De kern is volgens mij business boven compliance, geld boven controle, waardoor er onvoldoende aandacht en prioriteit was voor interne controles, disfunctioneren.

Wat mij ook zeer verbaast, is dat er meerdere malen onderzoek is gedaan door De Nederlandsche Bank en door de Europese Centrale Bank. Hoe is het in hemelsnaam mogelijk dat ING, ondanks al die onderzoeken en zelfs een formeel handhavingsinstrument door De Nederlandsche Bank, niet heeft geluisterd? Hoe heeft u zo hardhorend kunnen zijn? Dat is de les die we hier zouden moeten willen trekken. We kunnen elke wet bedenken, maar als banken niet meewerken aan de uitvoering, dan heeft dat geen zin. Dus hoe komen wij tot de situatie dat banken wél tot uitvoering overgaan. Dat is de vraag die ik wil stellen. Dat is het antwoord dat ik graag wil horen.

Nog één opmerking daarbij. We hebben natuurlijk het interview gelezen van Henk Breukink, die ook verantwoordelijk is voor het beloningsbeleid. Wat zou er eigenlijk moeten veranderen in het beloningsbeleid om te voorkomen dat business niet boven compliance gaat?

1-053-0000

Diederik van Wassenaer, Global Head of Regulatory and International Affairs, ING Bank. –

I will respond in English if I may, because it’s probably easier for most.

You mention business over compliance, failure of internal controls and investigations by the DNB, and ask how it was possible that we failed to heed what the Dutch Central Bank told us to do.

I can only acknowledge that in ING, in the period that was investigated (and this was about the Netherlands), the internal control framework did not work as it should have done. Indeed, too little time, attention and money was invested in complying with anti-money-laundering regulation. There is no denying that. We regret it.

The DNB had indeed pointed out to us in the past, on a few occasions, that we should improve the situation, and whenever the DNB told us to do that we heeded the advice. But we looked at what was requested and resolved what needed to be resolved in that area – sometimes a relatively small area of the bank needed to be addressed, and we concentrated on that – and what we did wrong was not taking a broader perspective. We did not look across the bank to see whether or not the issue that had been highlighted had arisen in other parts of the bank as well.

Today we have instituted a Global KYC (‘Know Your Customer’) Centre, with a high degree of management oversight over the entire bank, to ensure that this problem that you highlighted will not be repeated. You are completely right that when we look at the past what we need to do is learn the lessons from that past and change the organisation and the mindset to avoid repetition.

You referred to remuneration practices in ING. First of all, of course, European law has certain provisions to the effect that you can take away various bits and pieces of variable compensation if, after these have been awarded, things are wrong. So there are incentives already built into European law to incentivise compliant behaviour. But more important, we think, is the change of the culture, and Mr Nielsen alluded to that as well. We must instil into the organisation a culture where compliance with laws and regulations is of the utmost importance. We think we
are working on that change of culture, we have learned the dire lessons of the past and we are taking all the measures that we believe are required to avoid any repetition.

Miguel Urbán Crespo (GUE/NGL). – Tengo dos preguntas para el representante de ING.

En primer lugar, si ING había recibido avisos desde hacía más de 10 años de que sus sistemas de control para evitar el lavado de dinero eran excesivamente laxos, una situación que ustedes mismos han reconocido, y que no se ha actuado suficientemente para cambiar esto, la pregunta sería: ¿considera usted que esta laxitud ha podido suponer una ventaja a la hora de captar clientes y capitales interesados justamente en realizar este tipo de operaciones de lavado de dinero y evasión?

Y, en segundo lugar, si, como hemos visto en los sucesivos escándalos de lavado de dinero y evasión fiscal, los bancos están demostrando ser una pieza fundamental de los entramados, facilitando estas operaciones, incluso diseñando métodos que permiten evitar controles, la pregunta sería: ¿qué piensa usted, como banquero, que está fallingo, ahora mismo?, ¿deben seguir teniendo los bancos la responsabilidad de controlar y señalar cuando se dan operaciones sospechosas o deberíamos tener una agencia independiente para que no volvamos a tener situaciones como las que estamos viendo aquí de forma reiterada?

Diederik van Wassenaer, Global Head of Regulatory and International Affairs, ING Bank. – Thank you very much. We, as essentially all banks in Europe, operate a three-lines-of-defence model where the three lines act independently all towards one single goal and that is to ensure compliance with laws and regulations.

One of the things that did not work well at ING in the past was that these three lines of defence acted too much in silo. So, actually, they took their own roles too seriously and did not check with each other from time to time whether they needed to cooperate more rather than feverishly preserving the independence and integrity of the system that we had designed.

That was one of the salient points underlying the issues that we investigated ourselves: there was not sufficient management oversight and there was too much of a silo approach towards compliance with laws and regulations.

Miguel Urbán Crespo (GUE/NGL). – Discúlpeme. Una de las preguntas que le he formulado era si cree que la laxitud en las medidas de control pudo favorecer la captación de clientes por parte de su grupo en esos diez años. Yo creo que es una pregunta muy concreta y creo que es además pertinente.

Diederik van Wassenaer, Global Head of Regulatory and International Affairs, ING Bank. – The investigation did not yield any information on the actual amount of money that was laundered through ING systems. That, by the way, was a problem. The investigation did not show anything of that nature. What it showed was that the controls were not adequate. We are now concentrating on improving those controls, improving our tools and improving the mindset within ING, first and foremost.

Chair. – A remark on the order of speakers: as GUE/NGL has recently become a larger Group in this committee, the order of speakers is today as it is, so now Sven Giegold for the Greens.

Sven Giegold (Verts/ALE). – Chair, I have a number of precise questions and would appreciate precise answers. The biggest damage caused by these large-scale money-laundering scandals is that normal citizens have the impression that some companies are above the law and ignore the rule of law. Therefore, I have a test for you, Mr van Wassenaer, and also for you, Mr Nielsen.
Could you give us the number of staff in the framework of these money-laundering investigations? You were reported to the law enforcement authorities because of your suspected wrongdoing. Can you assure us in committee that you will report to the law enforcement authorities each member of staff – regardless of the level of hierarchy in your bank – who is suspected in your internal investigations of having broken the law?

Second, I would like to know whether your two institutions can commit here to a white-money strategy. That means that you check whether your customers’ money comes from clean sources or whether they might be having problems with the tax office, meaning that money invested in your companies is not properly taxed, and that you will drive out these customers as other international banks have done?

Third, I would like to know whether you can commit here to reporting back to us on your presence in different tax havens, where both of your companies operate still, what sort of business you do, and whether you would consider reducing your business in these tax havens.

Lastly, two concrete questions. Number one to you: is Danske Bank in favour of Denmark joining the Banking Union so that we can have more uniform supervision of your bank? To ING, Mr van Wassenaer, you are one of the few banks which still provide correspondent banking to Malta and to Maltese banks. Will you reconsider providing that correspondent banking, given the structural problems with money laundering in Malta?

Jesper Nielsen, interim CEO, Danske Bank. – I can do that, thank you very much. In terms of reporting, we have reported everything we know on all that has been investigated and more than a hundred people have been directly investigated by our investigation. All that information is shared with the authorities. In terms of whether that is high or low in the hierarchy, that doesn’t matter at all in terms of that, so that’s how it is.

If you look at tax or helping with anti-money laundering, I think we are committed to fighting that. I think we will still see criminals trying to circumvent the systems with new methodologies, but I can assure you that we are committed to preventing everything we can. We also have a hard stance in terms of tax evasion and not participating in tax evasion, and there is no indication that Danske Bank is part of the dividend tax case going on at the moment. Obviously we’re still investigating whether there should be anything around that, but to my knowledge there is nothing to that, so you have that commitment and also …

Sven Giegold (Verts/ALE). – No, will you screen your customers according to a full white money strategy? That was my question.

Jesper Nielsen, interim CEO, Danske Bank. – I think we screen customers …

Sven Giegold (Verts/ALE). – All your customers are screened?

Jesper Nielsen, interim CEO, Danske Bank. – Yes. All international transactions, all customers, are being worked through and we’re working through that in all our countries today, so starting with our high-risk customers, then medium-risk and low-risk customers, all that is being worked through, and that is also done in cooperation with the Danish FSA (Financial Supervisory Authority), so we are committed to doing that.

In terms of our presence in tax havens, we are in Luxembourg. That’s the only presence we have and that is purely for international Nordic …
(Interjection from Mr Giegold: ‘You are in Ireland, I would like to remind you of that’)

Sorry, I didn’t consider Ireland a tax haven actually, but…

(The Chair interrupted the speaker)

Chair. – Excuse me, please let us hear the answer, but let’s not discuss which Member States are in this category. That would be long.

Jesper Nielsen, interim CEO, Danske Bank. – Fair enough, then let me speak in general terms, in terms of where we are. It is a fair point. When you look at our activities outside Denmark, if you exclude the UK, then it is mainly for Nordic clients or clients with a Nordic orientation, so, in terms of being present in those countries, this is about helping mostly Danish firms in doing their business abroad, rather than hooking up with local clients.

Diederik van Wassenaer, Global Head of Regulatory and International Affairs, ING Bank. – You asked about the number of staff involved in criminal activities in this particular instance. Let me reiterate that during lengthy and detailed investigations, which took a number of years and which involved very thorough investigations by the police authorities, and by ourselves, no evidence of any collusion or any criminal acts perpetrated by our own staff was discovered. So our assumption is that no staff were involved in criminal activities. The company was doing things completely the wrong way, but there were no individual staff members involved in these activities or in collusion with clients.

However, we do have a policy that if staff members perpetrate criminal activities we will investigate those activities and we will report them to the police if and when allowed to do so. In some jurisdictions, perhaps, that is more difficult than in others, but that is always our policy. As to what you call the ‘whitewash’ or ‘white money’ strategy, at the inception of a client relation we will make inquiries into the source of funds. Taking the example of a student, the source is usually national funds or parents. You make these enquiries on a risk-based basis, but, of course, if throughout the existence of the client relation anomalies occur or strange things happen, then we will, of course, dive into that.

The second part of KYC (Know Your Customer) is customer activity monitoring and that’s where you do, indeed, look at deviations from normal patterns and suspicious behaviour. That’s what we will investigate there and then. Let me say that during the investigative period none of these activities was up to standard, and every effort we make is geared towards bringing those activities up to the required standard.

On tax havens: we have a policy not to involve ourselves in schemes that could lead to tax avoidance, we do not give tax advice. But, yes, in response to your question, we are in Luxembourg, we are in Ireland. We are in the Netherlands, which is perhaps seen as a tax haven by some as well, and I’m not joking about this. But I don’t believe that we are present in any country just for the fact that its tax rates are favourable.

We report on our tax base annually, we are very transparent in that. The total tax percentage that we pay on our income is higher than the amount that is taxed in the Netherlands, and we see that as a token first of all of being very transparent about this, and secondly as an indication that we do not seek to be present in a country just because it has a favourable tax system. We choose our countries, like Mr Nielsen explained for Danske Bank, because we want to be able to serve clients in those countries, and very often when it comes to clients who are outside their home countries these concern home-country clients.
As to correspondent banking ...

(The Chair cut off the speaker)

Mario Borghezio (ENF). – Signor Presidente, onorevoli colleghi, sta avendo un grande riscontro nel mio paese, l'Italia, uno scandalo riguardante il riciclaggio di enormi flussi di capitali, probabilmente con utilizzazione da parte dell'ISIS, derivati dal contrabbando del petrolio libico.

Perché introduco questo argomento (del quale, ovviamente, prego la Presidenza di prendere atto, ne fornirò la documentazione)? Perché pone il problema delle grandi organizzazioni criminali: in questo caso si tratta dell'ISIS e del terrorismo, in altri casi della criminalità organizzata, specialmente quella di stampo mafioso, come quella di origine italiana, che è molto presente anche nei paesi del Nord Europa.

La mia domanda è questa, riallacciandomi a questo grave caso italiano: qual è la collaborazione che viene da parte degli organi di investigazione? Perché quando voi ci dite – e lo dite giustamente – che non potete fare indagini sulle strategie e sui movimenti dei vostri clienti, ecco, qual è l'apporto informativo che avete ex ante dagli organi di informazione? Nel caso italiano, io penso che sia evidente che non c’è stata questa attivazione. Nei vostri casi avete esperienze di questo genere?

E poi, se vi rivolgete a questi organi – ove ci siano – d'indagine fiscale, finanziaria, eccetera, avete collaborazione o invece è questo uno dei punti deboli? È a proposito di punti deboli della normativa, io mi permetto di segnalare alla Commissione un aspetto che, a mio avviso, non è stato ancora ben lumeggiato: è quello dei rischi di un'inefficienza sistemica dei controlli antiriciclaggio dovuta al fenomeno, tutto da mettere in luce, tra l'altro con iniziative e normative di trasparenza, che riguarda il cosiddetto euro scritturale, e cioè quell’euro che, come riconosce la stessa BCE, è una moneta creata contabilmente dalle banche commerciali, non centrali, come parte dell’aggregato monetario M1 assieme alle banconote, quindi assieme alla moneta legale.

Si noti questo: questa moneta scritturale è contabilizzata dalle banche, dalle imprese non bancarie e dal settore pubblico come se fosse identica all'altra moneta, a quella corrente che esce dalla BCE. Tutto questo crea un flusso non indifferente – nel mio paese si parla di mille miliardi, quindi immaginiamo! – che non è trasparente. Allora io mi sono ricordato, quando ho approfondito questo tema, quello che ha svelato al Parlamento europeo un uomo importante come l'allora responsabile mondiale ONU della lotta al traffico di droga, che ci disse: "Guardate, ragazzi, che il riciclaggio dell'enorme flusso dei capitali del traffico internazionale di droga avviene attraverso le banche".

Diederik van Wassenaer, Global Head of Regulatory and International Affairs, ING Bank. – I think these are very valid and forceful observations. The questions I took out of this are whether the anti-money-laundering (AML) controls are adequate and where could we improve them.

I think that the AML laws and regulations are very clear but, as Mr Nielsen observed and I made the point too, enhanced cooperation between market players (banks) and between market players and authorities could be beneficial. Let me give you one example. We have a very important role to play, which is that of the gatekeeper. We apply, and try always to improve, our systems in terms of playing that role.

On the other hand, law enforcement usually has its own priorities, and if we could find a means whereby the law-enforcement priorities could be shared with the banks, then perhaps – apart
from all the things we will continue to do in terms of activity monitoring – we could, in some cases, try to dig a little deeper than would be possible without those priorities.

That is a clear example of where perhaps we could enhance the system. But, as such, the design of the controls is very good.

Luděk Niedermayer (PPE). – I need to go back to my first question, if I may, because I need a little bit more explanation on what ‘different culture’ means in the Estonian branch. Secondly, we are both finance people so we understand that people do certain things for clear reasons, and the reasons for wrongdoing in the Estonian branch could be only two: either that those involved were rewarded by the company for creating high profits, or that they were corrupted by the customers. So I wonder what, in your view, was the motivation?

Jesper Nielsen, interim CEO, Danske Bank. – I think that’s a good question. To answer it will obviously be speculation on my part.

If we look into the report which is being prepared and for which we’ve been through, I think, 8 million emails – 12,000 documents in terms of documenting this case – it is clear to us at least, and it is the reason why we have reported so many people to the authorities, that the main issue here is internal collusion.

As to whether we had procedures for variable pay that should have been better – probably. But I don’t think that was the main driver. Also, in general, when we talk about variable pay it’s important – and it is a point made by my colleague too – that it should reflect the behaviour you want, and that risk mitigation should be a significant factor in that pay as well.

We have major work ahead of us to work this through. In terms of culture in Estonia, I think this has been closed down. There are no employees or managers now there who have been involved with this activity, so obviously it changes the culture dramatically when you have a complete set of new people and a new business model.

Ana Gomes (S&D). – Mr van Wassenaer, money laundering crimes were identified in ING, not just misdemeanours. Can you tell us what the predicate offences were that were linked to these crimes? And was anyone prosecuted by the authorities as a result of this scandal in the Netherlands? Was there any case of suspicion of the financing of terrorism?

I noted that Mr Nielsen referred to Luxembourg as a tax haven. We absolutely concur. But, in the case of ING, 25 offshores in the British Virgin Islands were linked to the Geneva branch of ING, not to Belgium, and not to the Netherlands. So what is it about the Geneva branch, or about Swiss regulation, that makes this kind of business with offshore entities so appetising?

In your written statement, you mentioned the need for public-private partnerships to enhance cooperation, and also inter-bank exchanging of information. My colleague Sven Giegold asked you whether you would be contemplating terminating relations with Malta because of structural money-laundering problems there. But it’s not only Malta that has the likes of Pilatus Bank and Satabank. Throughout Europe, including in my own country, Portugal, a lot of banks are owned by politically exposed persons (PEPs). We are not talking here about accounts: they are owned by Angolan PEPs, for instance.

We don’t see the European Central Bank and the supervision authorities doing what ought to be done at national and European level. So what do you, from your own experience, consider ought to be done in terms of imposing some scrutiny on the corresponding banks?
Diederik van Wassenaer, Global Head of Regulatory and International Affairs, ING Bank.

In the statement of facts published by the Department of Justice, four criminal activities that ING may have facilitated were identified. One of those ended in a settlement. One is currently being prosecuted in court, and for the other two we have no information as to what happened.

On the question of whether there were any suspicions about our involvement in, or any facilitation of, terrorism financing, my answer is there were no such indications whatsoever.

On the links between the Geneva branch (which is a branch of our Belgium subsidiary) with the British Virgin Islands, we have a stated policy not to involve ourselves in tax evasion. We don’t give tax advice, but clients of ours may have had, and sometimes do have, a legitimate reason to do business through, or via or in, an offshore location.

Whenever a client is located in – or we deal with a part of a client that is located in – an offshore location, we apply an extra high degree of scrutiny. When we have established to our own satisfaction that there is legitimacy in that situation and no case, nor even any suspicion, of tax evasion, then there’s no reason why we should not be able to do business with that part of the client.

About Malta and correspondent banking: over the past years, we have terminated tens of thousands of correspondent banking relationships, and those that we preserve, we think, play an important role in the financial system, in the transaction of money flows throughout the European Union.

We do agree with you that a high degree of scrutiny should be applied to correspondent banking relations in general. We do not make any general exceptions to that but we look at what the Financial Action Task Force (FATF) advises the world’s about high-risk countries. We take extra care in that, and that can entail terminating correspondent banking relations if we are not satisfied with the degree of compliance by the correspondent bank with its own applicable laws and regulations. That goes, of course, for banks which are an ultimate beneficial owner or the owner of which is a politically exposed person. That goes without saying.

Chair. – That brings us to the end of this part. I’d like to thank Mr van Wassenaer, Mr Nielsen and Ms Arffman, and all the other guests, for their participation. The committee will meet and we will continue in five minutes.

3. PANEL 3: BETTER COOPERATION FOR BETTER RESULTS IN THE FIGHT AGAINST MONEY LAUNDERING: ENHANCING THE ROLE OF THE EBA IN AML SUPERVISION OF THE FINANCIAL SECTOR

Chair. – Colleagues, guests, let us start. Let us continue our meeting. The last part is on enhancing the role of the European Banking Authority (EBA) in anti-money-laundering supervision of the financial sector. I’d like to welcome our guests: Adam Farkas, who is Executive Director at the European Banking Authority; Alexandra Jour-Schroeder, who is acting Deputy Director-General, DG JUST, European Commission; and Martin Merlin, who is Deputy Director-General of DG FISMA, European Commission.

Each of the speakers will have seven minutes for his or her introductory statement. I would like to ask Mr Farkas to start. The floor is yours.
Adam Farkas, Executive Director, European Banking Authority. – Chair, on behalf of the European Banking Authority (EBA), thank you for inviting me to take part in this public hearing.

High-profile AML (anti-money laundering) and CFT (countering the financing of terrorism) cases are widely reported and Members of the European Parliament, as well as the Commission, have asked the EBA to review the application of EU law in various jurisdictions, amidst continuing allegations of breaches by financial institutions of applicable AML and CFT rules.

In their mutual evaluations, the Financial Action Task Force (FATF) and Moneyval have also raised questions about the adequacy of some competent authorities’ approaches to AML and CFT supervision.

Today I would like to update you on the EBA’s work regarding breaches of Union law and also to explain our evolving approach to enhancing AML standards across the EU. This is particularly relevant in the context of the ongoing discussions about potential modifications of the ESAs’ (European Supervisory Authorities) roles and powers.

I wish to highlight that these proposals appear largely to reflect the work we are already doing, but they are important as they would confirm more appropriate powers and resources for the EBA, and for the other ESAs, possibly.

Now let’s come to the EBA’s role and power. The EBA’s objectives include maintaining the stability and effectiveness of the EU financial system and promoting sound, effective and consistent regulation and supervision, and working to safeguard the integrity, transparency and orderly functioning of financial markets. To achieve this we have a legal duty to foster consistent and effective application of the AMLD (Anti-Money Laundering Directive). The EBA currently has a number of tools at our disposal to achieve our objectives. These range from issuing opinions, recommendations or guidelines to drafting legally binding standards where this is provided for in EU regulation. We also work to promote the effective implementation of our standards and of EU law, inter alia through training, peer reviews and facilitating the exchange of best practice. However, our powers to enforce our standards and guidelines are limited. We do not supervise individual financial institutions and we do not currently have the legal tools or powers to enforce compliance in a way that would compel a competent authority to change its approach. When we become aware of malpractice or suggestions that a competent authority may be in breach of Union law, we investigate and, should a breach Union law be confirmed, we issue recommendations. However, these recommendations can only address breaches of Union law and cannot make up for possible weak provisions of Union law and associated weak, ineffective supervisory practices.

The EBA has been asked to look into a number of potential breaches of Union law cases recently, which we have taken forward despite significant resource challenges. We launched a preliminary inquiry in Portugal, which was not taken forward at the time, but we identified deficiencies which needed to be remedied. This year, we looked at breaches in the FIAU (Financial Intelligence Analysis Unit) and the MFC Merchant Bank in Malta. In the latter, we did not proceed with a formal investigation but listed areas where we would expect to see some improvements in practice. In the case of the FIAU, we did find a breach and we have issued recommendations to address this, which the Commission also followed up later.

We currently have ongoing preliminary inquiries in Latvia, Denmark and Estonia. The latter two are linked to the same issue of an Estonian branch of a Danish bank which was invited to this hearing today. These investigations take significant time for our AML legal and management teams, but we believe they are worthwhile and we will continue to use this tool
where needed. However, we would prefer to focus our resources in future on addressing weaknesses ex-ante and working within competent authorities to strengthen their approaches, in order to reduce the incidence of money-laundering and terrorist-financing cases. To that end, we continue to work on our approach to policy development, implementation reviews and training and risk products.

Let me turn now to policy development – what we are doing in this area. The EBA, along with EIOPA (the European Insurance and Occupational Pensions Authority) and ESMA (the European Securities and Markets Authority), our sister ESAs, has been actively working to foster a common approach to risk-based AML supervision under 4AMLD (the Fourth Anti-Money Laundering Directive) with policy products. These include guidelines on AML risk factors and simplified and enhanced customer due diligence, which provide financial institutions with the tools they need to make informed risk-based and proportionate decisions on the effective management of money-laundering and terrorist-financing (ML/TF) risk, along with risk-based supervision guidelines, which set out how competent authorities should assess the ML/TF risk associated with financial institutions and how they should reflect that assessment in their approach to AML and CFT supervision.

We also issued an opinion on innovative solutions for customer due diligence to promote robust and consistent supervisory responses to emerging technology. We are currently reviewing the risk factor guidelines and we will review the guidelines on a risk-based approach next year to reflect our implementation experience and any issues arising from our joint opinion on money-laundering and terrorist-financing risks.

To facilitate effective cooperation and information sharing across the EU, we are developing a cooperation agreement or an MoU (Memorandum of Understanding) between the ECB and national authorities. We are also in the process of developing own-initiative guidelines on cooperation between AML competent authorities to create the concept of AML colleges. The guidelines clarify practical modalities and set clear expectations that supervisors should cooperate effectively, domestically and on a cross-border basis. They also proposed the creation of AML/CFT colleges in Europe.

Now let me turn to implementation – what the EBA is trying to do on consistent implementation. To assist authorities in their effective implementation and practical AML supervision, the EBA has drawn up an AML/CFT strategy to review AML/CFT supervision in a number of other Member States. These reviews of national practices with regard to AML supervision will help to identify weaknesses and best practices in individual jurisdictions across the EU, allowing us to give early-stage feedback to competent authorities. The reviews will also feed into the development of policy products and our training offering, which are important features of our ongoing work to foster consistent and robust implementation.

In 2018, we have undertaken three major training courses for around 250 EU supervisors, and we intend to continue to roll out the training offering to enhance the quality and consistency of supervision across all relevant EU competent authorities.

We are also doing risk-identification work. Every other year, the three ESAs are responsible for a joint opinion on AML risks to the EU financial sector and we are currently finalising our second such opinion as an EU-wide complement to national risk assessments.

If I look now at the way forward – where do we go from here? The EBA currently has 1.8 FTs (full-time staff members) working on AML – in practical terms that’s two people. Even with support from national competent authorities and the EBA management support, our work can at best make a modest difference. Additional resources are vital to take this work forward more adequately, even under the same structure as at present. However, I also list our current work
plan in the context of the various proposals on the table to strengthen AML supervision across the EU.

I will focus on near-term proposals in the Commission communication rather than some of the longer-term institutional and legislative changes being mooted. The Commission communication of September 2018 suggested that resources and expertise currently scattered around the three ESAs can be centralised at the EBA. The EBA should receive an explicit mandate to specify modalities of cooperation and information exchange. The EBA should carry out periodic independent reviews on anti-money laundering issues and report to the EU Council, Commission and Parliament. The EBA should become the data hub of AML supervision in the Union. Lastly, the EBA should carry out risk assessment exercises to test strategies and resources in the context of the most important emerging AML risks.

The Commission proposals are welcome, recognising that these will be subject to debate and change. The direction they point to would allow the EBA more effectively to continue our work to improve implementation and coordination. It would improve resources and legal certainty. In particular, some changes along the lines of Commission communication would allow the EBA to maintain high standards in policy products, to assist better and provide consistent implementation; and would strengthen the EBA’s work to foster effective coordination and communication between agencies and jurisdictions.

In conclusion, I see the current steps to address AML in the EU as evolutionary rather than revolutionary. As noted previously, minimum harmonisation directives mean that national differences will continue to limit how much convergence our guidelines and standards can achieve. Nonetheless, the current proposals to strengthen consistency of implementation, cooperation and information sharing would, if backed by adequate resources, mark a modest but important step forward in improving AML supervision across the EU.

Alexandra Jour-Schroeder, acting Deputy Director-General, DG JUST, European Commission. – Thank you very much for inviting us to this important panel on cooperation. I will try to be as brief as possible so that we also have sufficient time for questions.

This panel is about cooperation and, for us, cooperation is indeed an issue we need to look into in more detail. We have seen in the past – and you have already discussed it this morning – that there are a couple of unfortunate cases, to say the least, where apparently there was a problem of communication between the various actors that are involved in looking into money laundering and the financing of terrorism.

I would like to start with a positive message by saying that the Fifth Anti-Money Laundering Directive has now been adopted. Parliament and the Commission joined forces to get this done and, for the first time, this instrument will have special provisions which legally enhance cooperation between supervisors on anti-money laundering, prudential supervisors and, as appropriate, the ECB by removing obstacles – and there have been a lot of obstacles of a really practical nature – to cooperation. Parliament and the Commission also wanted to send a very strong call to those operating in the field and to supervisors that they really have to cooperate with each other. Unfortunately, it will still take a bit of time for the Directive to come into force, but I can already tell you today that the Commission will do everything in its power to ensure that the Member States implement the Directive in time so that rules can enter into application.

I wanted to say a few words about an initiative the Commission took over the summer, and also in particular following recent events, to discuss, together with the chairpersons of the European supervisory authorities, including the European Banking Authority (EBA) but also the others, about what can be done in a more practical manner. How can we enforce the legal regime they
now have to do a better job? We did this in the context of a joint working group that worked very intensely over the summer to have a collective reflection on ways to improve the current framework, especially when it comes to both sides, anti-money laundering supervisors and prudential supervisors. You have received the reflection paper that is the result of the work the group has done.

The Commission took this on in a communication that was issued after the group finished its work, in mid-September. It takes stock of this paper, but also has an important proposal to amend the European Supervisory Authority (ESA) Regulation to grant it more powers. My colleague, Martin, will speak about this in a few moments. I would also like to stress that this is not only about legislation, but there are a number of non-legislative actions that can be taken quite quickly to overcome problems in terms of cooperation and who does what.

Let me perhaps say quickly a few words on that. First of all, what can be done on the prudential framework that we have? There we already see a good case in telling supervisors more about what needs to be done to help them, also taking money-laundering considerations into account. I think it will not come as a surprise to you that money-laundering issues have not really been in the focus of prudential supervisors, but this is something that needs to be overcome. This does not mean that in the end, a prudential supervisor becomes a money-laundering supervisor, but from our point of view, we see a real need for those who are supervising banks and other financial institutions to be aware of this issue when they do authorisation, monitoring fit and proper tests. They should also look into the AML risks and there we can already help quite quickly with a number of practical tools like guidelines, training and these kind of things that are quite easily available. Exactly the same goes for the other part, the EMA supervisors. I think they also need some guidance and help about how to exchange information and how to impose sanctions, but also how to work with the prudential supervisors. The communication – and the reflection paper even more – takes a look into the future. It is a bit longer term, but on the other hand, it should not be too long – to see what more we can do. For example, is there also scope to look again into the legislative anti-money laundering framework? There have been concerns, which we share, that with a directive we can do a minimum level of harmonisation, but there is still the issue of how this is implemented in the Member States. You will certainly know that the Commission had to launch a couple of infringement proceedings when it comes to the implementation of the Fourth Directive. It is unfortunately quite impressive how many letters have been sent, but there is maybe an issue we have to look into: whether it would make sense at a certain moment to move away from minimum harmonisation and to make it a more stringent framework, for example, in a regulation. This is not something for now, but I think it’s something that we will have to look into in the future.

Another issue is the question – and this is really an open question – of whether at some point it would be useful to have a sort of EU body – an authority – to look into AML issues. I do not want to go into a discussion today about what kind of organisation could be the right one. It could be an existing one or it could be a new one, but, from our point of view, we feel that it is important to assess whether this would bring added value, especially to address the issue of cooperation, which so far has been there but could certainly be improved. It is clear that we need a proper assessment on this and we will come back to that.

I think I will stop here and hand over to Martin, who can give you more information about the other strands we have been working on. Thank you so much.

Martin Merlin, Deputy Director-General, DG FISMA, European Commission. – Thank you very much. Good afternoon. I will focus my few remarks on the legislative proposals that the Commission issued in September in response to the high-profile money-laundering cases, some of which have been discussed this morning.
The Commission took the view that there was an urgent need to strengthen AML (anti-money laundering) defences in the EU through legislative action. Therefore, following the State of the Union speech by President Juncker, we issued a legislative proposal, which aims at mainly reinforcing the capacity of the EBA (European Banking Authority) to ensure, first, robust enforcement of EU AML rules, and also to foster better cooperation between the competent authorities involved. As Adam explained, the EBA is already in charge of promoting consistent supervision of AML rules in the banking sector and we considered that we could go further by giving the EBA a clearer mandate, additional means and tools to do the job and also more resources. On that, we made the proposal that the EBA should move to having 12 people responsible for AML matters by 2020.

I will now briefly sketch out the key proposals that we made. First, we propose to optimise the expertise and resources on AML issues within the EBA. This expertise is currently scattered across the three European supervisory authorities. We know that resources are limited and we took the view that it would be more efficient to have only one supervisory authority in charge of AML issues. We thought that the EBA was best placed to do that because it is already on the front line on these issues. The banking sector is particularly prone to money laundering and there are also systemic implications in the banking sector which you don’t see that much in other sectors. As part of this revamp of the EBA, we proposed the creation of a high-level committee, chaired by the Chair of the BoS (Board of Supervisors) and composed of heads of Member States’ AML authorities.

Secondly, we propose to clarify the scope and content of the AML tasks entrusted to the EBA. We want to give a more explicit and comprehensive mandate to ensure that risks of money laundering in the EU financial system are effectively addressed and also incorporated into the supervisory strategies and practices of supervisors. We think that, through legislation, the legislator should set out more clearly its expectations as to the leading role that the EBA should take.

Thirdly, we propose to reinforce the tools for carrying out AML tasks. In particular, we think that the EBA should be empowered to collect information relating to weaknesses identified in the AML processes, procedures, governance and the business models of financial institutions, and that this information should be made available, where appropriate, to other supervisors. What we want here is for the EBA to gradually develop into a data hub which will facilitate the exchange of information. We want the EBA to be better able to promote the convergence of supervisory processes with a stringent review of supervisory authorities and also with assessment exercises to test the strategies and resources of the competent authorities in relation to money-laundering and terrorist-financing risks. Where the EBA has indications of material breaches of Union law, we want the EBA to be empowered to request that AML supervisors start investigations on possible breaches and consider taking decisions and imposing sanctions on financial market operators. What we want to address here are the cases of inaction by certain supervisory authorities that we have witnessed in the past.

Finally, under very specific circumstances, we propose that the EBA should be able to address decisions directly to financial sector operators with regard to money-laundering matters. On top of that, we think that there should be a role for the EBA at international level. Of course, the national competent authorities will continue to interact with third country authorities. At the same time, for very high-profile cases with an international dimension involving several Member States, we believe that it would make sense for the EBA to have a coordinating role and also to interact in a streamlined manner with third country authorities.

I also want to say a few words on the ongoing negotiations in relation to banking prudential rules, notably the revision of the Capital Requirements Directive and the Capital Requirements Regulation, which are currently being discussed in trilogues. The Commission hasn’t made
formal proposals on that, but we believe that we should seize the opportunity of the trilogues to strengthen what prudential supervisors can do in this field. We think that we should, notably, have a clearer general obligation for all competent authorities to cooperate in order to address problems – prudential supervisors, AML supervisors, national supervisors. We think that there should be, in particular, a smoother exchange of confidential information between prudential supervisors and financial intelligence units. Finally, we want a better inclusion of AML objectives in the work of supervisors when it comes to the authorisation of banks, fit and proper assessments and also ongoing supervision. We hope that, working with Parliament and the Council, we can conclude on that very soon.

These are short-term actions. As Alexandra said, we need to think in the long term as well. The idea in the Commission is to do that next year, and to do a very thorough assessment of what went wrong recently and what can be improved in terms of the overall set up at European level to make sure that we have the most effective institutions in place to combat money laundering and terrorism financing. That’s work to be undertaken next year in view of proposals, maybe under the next Commission.

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Luděk Niedermayer (PPE). – Thanks for coming. I will actually take just one slot if we have more because I don’t see any other PPE Members here, so I will be just a few seconds longer. I see a lot of Greens here, I must say.

First, I have a very concrete question. An investigation is now going on in the US. The US Department of Justice is dealing with three Danske Bank corresponding banks because the corresponding banks should have some responsibility. Let me ask you if some of your institution is now in close contact with the US administration and if you are aware of the direction of the investigation. This is a concrete question.

Now, a little bit less concretely, reflecting frustration from what we have heard this morning, I must say that it was said that we would talk about cooperation and so on, but I guess we need to talk about results and some change. It seems to me that we have learned about the most important cases either from our US friends or from whistle-blowers. It doesn’t seem that our system works or that our authorities responsible for money laundering are delivering results. My question is how to trigger this change and how to make sure that something will change. I guess that Adam Farkas actually witnessed the discussion that went on here this morning and would also agree that what we have just learned was horrible. He talked about many measures and many parts of the puzzle that should bring improvement, but also mentioned that he has something like one and half people for this. So, on the one hand, there are a lot of promises, and, on the other hand, one and half people. I don’t think this will bring any change.

Alexandra from the Commission mentioned one thing that is causing a big problem for me: the question of to what extent it is realistic to assume that prudential supervision will also do anti-money laundering. The supervision was, at its origin decades ago, set up to make sure that a bank is sound and robust and will sustain its programmes, but actually those guys that are involved in money laundering are very often the most robust, the most sound and performing in the best way, financially speaking. This means that I am not surprised that supervision is not very concerned about it, but in money laundering, the overall system is only as strong as the weakest points and any weak points mean that we are weaker altogether.

My concern is this: some of you said that we are looking for evolution. I wonder if evolution means that tens of billions more money which are the result of corruption and crime, very often coming from Russia, will enter the financial system through our banks and will finance more corruption, crimes or wrongdoings globally. I guess we can’t afford it, so my broad question is:
do we have sufficient know-how and know how to bring about change because this is not about evolution? There must be change that will make sure that things like what happened with Den Danske will not happen again – and quite quickly.

Chair. – Quite quickly, as we have one minute and 22 seconds for the answers.

Luděk Niedermayer (PPE). – I thought I had two slots.

Chair. – I understood you said you wouldn’t use them both, but anyway we will handle it somehow.

Adam Farkas, Executive Director, European Banking Authority. – Chair, I shall try to be very concise. Regarding the inquiries into the correspondent banking partners of the bank which was present this morning, we are not involved in these contacts but we understand that there are contacts between the US authorities and the Danish authorities, as well as with the Single Supervisory Mechanism (SSM). This is our understanding, but we are not participating in these discussions.

The persons I mentioned are the anti-money-laundering (AML) experts at the European Banking Authority (EBA), two AML experts, and they are working nearly full-time on these issues. I share your concerns about how much more we can do with these resources. The Commission proposals envisage a significant increase in these resources. The other thing we are doing, and I mentioned the reviews which we are carrying out on different Member States, is that we have secured some resources from national authorities so there will be combined teams of EBA staff and some national authorities.

One short remark on prudential supervision and AML: clearly, prudential supervision has got a well-defined responsibility to assess the governance and risk controls of banks, and the governance and risk controls of banks include, of course, the different lines of defence against the risks of money laundering and terrorist financing. So prudential supervision does have a role, even in the current setting, in enforcing the rules and putting pressure on the banks to prevent these risks from materialising.

When I mentioned evolution, and I will stop here, I referred to the fact that what we see coming is probably an evolutionary approach of improving the situation. To us, it doesn’t look like a revolutionary jump, and there might be a need for greater ambition in this area.

Alexandra Jour-Schroeder, acting Deputy Director-General, DG JUST, European Commission. – Yes, I will be very, very quick. On your first part, cooperation with the United States, I can say from the Commission side that we are in regular contact with the Treasury, and also with FinCen, but that does not relate to the details of the ongoing investigations. It is more that we are very keen that we are sufficiently kept informed by the US about what is going on, and we are very active behind that.

You’re right on the whistle-blowers: we need a change in culture in Europe. The Commission has made a proposal recently. Not everybody will like all the details in it, but we feel it is important that we start with a legislative initiative to facilitate the framework so that people can speak out without concern that if they do that their life becomes a catastrophe, so we really have to trigger a change here.

On your question on whether prudential supervisors can work on anti-money laundering. There is certainly a focus in your task, what you do, but from our point of view, I think they have to.
If you check whether the bank is robust, the question of whether the bank has an effective anti-money laundering system in place, for us, is a prerequisite. That does not mean that a banking supervisor will have to do everything alone. We are coming back again to this issue that you have to liaise with other authorities that exist in all the Member States and have maybe more expertise in this, but it is not a question of ‘should I ask the anti-money laundering supervisor or not?’ We need again a cultural change resulting in AML not being seen as something exotic but something that can really be a systemic issue for a bank, as you have seen this morning. In my view, we also need a change of culture here resulting in all sides that are looking into the robustness of financial institutions working better together. I think that what we have done so far in the short term has been the right way to go.

Martin Merlin, Deputy Director-General, DG FISMA, European Commission. – I would like to add a few elements very briefly. On the first issue, relationships with the United States authorities, we don’t have those as far as DG FISMA is concerned. We are not in a leading capacity here, but what we have proposed, as part of the changes to the European Banking Authority (EBA) Regulation, is that the EBA should in the future, where appropriate, take a leading role in interacting with third-country authorities so that Europe can speak with one voice.

On your second very important question – about how to trigger changes – I think a number of major changes can be triggered if we implement the recommendations put forward by the group of authorities who produced the paper over the summer on the future of anti-money-laundering practice in Europe. We believe that there is a major role for the EBA in making sure that all authorities move towards best practice in Europe. We have some effective national authorities, we have some authorities which are far less effective, so what the group has proposed is to have a sort of stock-taking exercise to identify best practice, identify the major deficiencies, and then make recommendations so that we can have a sort of race to the top towards best practice. That’s in the first instance.

In the second instance, we need to look at the fundamentals of the architecture in Europe: what is best done at national level, what is best done at European level, looking at supervisors, looking at AML authorities, and looking, too, at Financial Intelligence Units (FIUs). That is very fundamental work that, as I said, the Commission is committed to carrying out next year.

You mentioned resources, Mr Niedermayer. I said in my introductory statement that the Commission has proposed that the EBA be equipped with 12 members of staff to work on AML issues, moving up from the situation now, which of course is untenable. But the budgetary authority might want to go a little bit further than that.

Jeppe Kofod (S&D). – Chair, I think that what we have just heard is a good start. I have two questions. The first is on the investigation of these large money-laundering scandals. We’ve heard about them today, from the ING Group and Danske Bank. In your view, Mr Merlin, how could we effectively strengthen the joint investigations?

Several authorities are doing their investigations, for example the Danish Financial Services Authority had done an investigation, but that’s grossly insufficient to cover the whole picture because this money-laundering scandal covers several EU countries. So how do we put up an architecture for joint investigations, with all relevant partners, that is effective in going to the root of the problem, and in following the money to the end? I didn’t hear you talking about that. Maybe it is a question for DG JUST, but how can we do that more effectively at a European level – coordinate an effective joint investigation?
Secondly, and more fundamentally, I said that what we heard today is a good first step, but this thing about having a legal framework for a strong enforceable single market, as we have in this sector, combined with national anti-money-laundering (AML) supervision, is grossly insufficient, as we can see in all of these cases. I would ask you if you could elaborate on it for the future.

Could we start here: why do we have a single market but no single standard of how to supervise, and no single authority to ensure that standard? To me that is illogical. Don’t we need a new European AML authority that could coordinate this effort, because what we know in Europe—and you can read about it in the press—is that we have a money-laundering problem. It is not only the two cases we heard about today: over recent years there have been several cases and, according to your estimates, more than EUR 100 billion a year has been laundered through Europe in financial institutions. So how do we really get to the bottom of that problem? Maybe by having an authority to ensure consistency and a high standard of supervision?

Chair. – Who would like to comment?

Jeppe Kofod (S&D). – I think I will defer this to colleagues from the Commission.

Alexandra Jour-Schroeder, acting Deputy Director-General, DG JUST, European Commission. – On your first question, on how we can work together to avoid this happening again and how to join forces, I think what is very important first of all is that we have a clear analysis of the case and that cannot only be in the hands of one authority. What we are going to do in the Commission is a sort of ex post analysis, first of all in the cases which make us very concerned. What has happened? What went wrong? From that, we need to take the necessary conclusions because we really have to understand the details. We know more or less in general terms that sometimes AML supervisors do not speak with the other ones. We have in one country home supervision and then we have a host supervision, and sometimes there is no channel and this is certainly something we are working on. For these concrete cases, I think we really need a bit more in the details about what has happened and then to see how we, together with the EBA and the other authorities, can do this very quickly.

On your second question: do we need a single supervisor? I cannot say yes or no today, but I agree that we have to look very quickly into this. We have done it in other areas and this has always been a bit of an issue. Member States can do this alone, but we also need a very good analysis and assessment very quickly, actually, to see what the added value could be of a European body—that may be very true—because we have several aspects. We have to combine what is happening on the prudential side, on the AML side, which is much broader than financial institutions, but also when it comes to the cooperation of financial intelligence units (FIUs), who in our view, play an important role.

I am a bit disappointed, I must say, since I see now that the proposal that the Commission has made on FIU cooperation does not go very well in the sense of ‘do not touch the cooperation of FIUs, they are independent’. I’m not putting into question the independence of FIUs, but here I really see an issue that we need to look into to really make them work together.

Martin Merlin, Deputy Director-General, DG FISMA, European Commission. – Chair, as I said, we need to distinguish between the short-term changes which I outlined and are intended to make the EBA (European Banking Authority) more effective and possible long-term structural institutional changes. For long-term changes, we need some time, we need to understand extremely well what has happened over the last few months and years and we also need to take a forward-looking approach. It’s not good enough to simply fight the last battles. We need to see how the institutional set-up at European level can be organised best so that we
can anticipate possible future issues and major cases of money laundering, and we have to do all that bearing in mind the principle of subsidiarity.

So again that is analytical impact assessment work that we will carry out next year. We have started already and we hope that we will soon have the opportunity to discuss that.

On the cross-border dimension that you mentioned, I cannot really speak for the articulation between national AML (anti-money laundering) supervisors, but I can say a word on prudential colleges of supervisors. We have such colleges for all significant banking groups in Europe. There’s probably a case for these colleges to work better together, including on AML issues, so that they speak together on the matter, and are better able to identify problems, which should then be reported to FIUs (financial intelligence units) or law enforcement agencies.

Pervenche Berès (S&D). – I have so much to ask. I will try to fit it into the five minutes.

There’s one thing that nobody has been discussing up to now, at least not while I have been listening, which is the shadow banking system. I still believe, when it comes to money laundering, that it plays a big part. I know it’s not a core issue in relation to the proposal with which we are trying to fix governance but, nevertheless, if we want to be consistent we cannot forget about it – and when I look at some of the proposals currently on the table for fixing this problem, I am not sure that we will do as much as we should.

I am happy to learn that the Commission is now helping to address what the European Banking Authority (EBA) had requested in relation to adjustment of the basic legislative act. This is good news. But I don’t know whether or not to thank the Commission for its latest proposal – let’s be honest – because, on the one hand, it’s efficient to take action before the end of the mandate, before we have the fully-fledged EU Financial Intelligence Unit. But it doesn’t ease the negotiations on the European Supervisory Authority (ESA) review and it does incur the risk that, in the Council, they will be so pleased to say that they are going for a political agenda, which is to fix the anti-money-laundering rules, that they will not care less about the ESA. And all that you’ve been saying relates to the real power of the ESA, in respect of benchmarks, breaches of law, to lead the College of Supervision, and blah blah blah …

In the same vein, I would like to ask Mr Farkas, from the EBA: to what extent is it burdensome for you to have a national competent authority on board when you have to deal with these topics. If we don’t change the governance structure of the board, will you be able to implement your mandate consistently in relation to AML? And the same applies when you conduct an inquiry: to what extent are national competent authorities helpful, or do you still really need to rely on a whistle-blower to guide you?

And how can we make sure that the legal framework enables you to address the situation of weak enforcement before you get to breach of law?

I also have a question to the Commission. Of course, everybody emphasises that a better exchange of information between the private and public sectors is of the essence. What about cooperation among our private-sector actors? How much is this needed? Because it’s all about competition, and you know the reputation risk: they don’t want to do it before they are obliged to do it.

Adam Farkas, Executive Director, European Banking Authority. – Thank you very much, Ms Berès, for all the questions, given the limited time.

The first one is: how effective have the current governance arrangements, the current national-authority-driven governance arrangements, been in the efforts to address these risks and, most
notably, in the ‘breach of Union law’ cases? What I can say is that clearly, when we resort to what is the strongest tool, the ‘breach of Union law’ tool, the current governance of the European Banking Authority (EBA), or of the other European Supervisory Authorities (ESAs) is probably not the most helpful. There is a clear conflict of interest in a governance structure where everyone who is voting represents a national authority and we are investigating the breach of Union law by national authorities. So it is an issue, and therefore we welcome the proposals for certain governance changes to strengthen the independence of the ESAs.

(The speaker was interrupted)

We would not comment on the legislative process but, of course, I am fully aware.

The second question is: how helpful are the national authorities when we are doing these reviews, or the ‘breach of Union law’ inquiries? In the former process, what I see, on the basis of our experience, is that there is heterogeneity of helpfulness and cooperation. Clearly there are authorities who become excessively defensive about these inquiries, and that’s one of the reasons why we try to put a lot of emphasis on the ex-ante reviews, trying to be helpful rather than finding breaches by the authorities.

On the issue of weak enforcement, that’s clear: when we do these reviews we do find weaknesses here in different areas – and the best tool we have now is to issue recommendations in the relevant area. Then, of course because it’s a published recommendation and there is a response from the authority or a commitment – as to whether they want to follow the recommendation – there is a certain ‘soft’ enforcement power, but we do not have any further powers to enforce.

1-093-0000

Martin Merlin, Deputy Director-General, DG FISMA, European Commission. – Very briefly, on shadow banking, we have proposed that the EBA (European Banking Authority) becomes responsible for AML (anti-money laundering) issues across the whole of the financial sector. That, of course, includes the parts of the shadow banking sector which are regulated, and lots of parts of the shadow banking sector are actually regulated, so they would fall under the remit of the EBA.

Of course, there are parts of the shadow banking sector which are unregulated. We believe that we have in place regular risk assessments, carried out by the various authorities, which should be used in order to assess whether certain parts of the unregulated shadow banking sector need to be looked at, monitored and maybe subject to new rules or new policies.

In cooperation with the private sector (these public-private partnerships), this is organised for the moment mainly at national level. It is very important that public authorities and the private sector cooperate because the private sector needs to know what it should be looking for and it is important to avoid national authorities being flooded with useless declarations of suspicious transactions, so there’s a lot of value in that.

As part of the reflections on the long-term structure at European level, we may see whether that dialogue should also be organised at European level and not only at national level, but we haven’t come to that conclusion yet.

1-094-0000

Sven Giegold (Verts/ALE). – First of all, I think we have made a lot of progress in EU legislation and also in supervisory activities around AML (anti-money laundering). On the other hand, the magnitude of the scandals is even bigger than our progress and, therefore, we have to be very critical and that is why I have some concrete issues.
First in your written answers, FISMA revealed that you have zero staff on integrity and criminality of financial market players. Money laundering is not in your competence, but integrity and criminality go beyond money laundering in finance. Therefore, I’m asking you: are you taking initiatives to build your own human resources in order to have an overview at least of what’s going on?

Second, when it comes to the reality of money-laundering supervision, I wrote to the Commission on 15 October a letter calling on you to investigate the total failure of the German FIU (financial intelligence unit). The current state of the German FIU is so poor that in comparison, the Maltese case is a minor one. Several tens of thousands of suspicious transaction reports are sitting on a pile of paper. There’s nothing happening with this; they are not working effectively. It’s a clear violation of Article 32 of the Anti-Money Laundering Directive to provide for an effective FIU.

Therefore, I am asking you now, Madam Jour-Schroeder, will you commit to opening an infringement case regarding Germany because of the effect of the non-effective FIU in Germany, which poses a security risk to Germany and Europe as a whole.

Lastly, Adam, sorry to disturb you, I wrote to you to open an investigation in accordance with Article 22(4) of the EBA (European Banking Authority) Regulation on the CumEx scandal. Andrea Enria wrote back to me saying, ‘well, we do not know whether the CumEx scandal is an integrity problem for the financial markets and the European banking system’. I have to tell you: if this is not an integrity problem, I don’t know what an integrity problem is, and I call on you to open that investigation and really research what happened around CumEx all over Europe. It’s a serious problem and it’s a credibility test for you.

Alexandra Jour-Schroeder, acting Deputy Director-General, DG JUST, European Commission. – I will take your question on the German case first. We have received your letter and we are in contact with the German authorities. We have received quite a large amount of information about the situation on the German FIU (financial intelligence unit), which indeed went from the BKA (Federal Criminal Police Office of Germany) to the customs service. We are analysing this as a matter of priority and, on that basis, we will take a decision on whether or not there is a case for an infringement. Today I cannot say yes or no, but we are on that.

Martin Merlin, Deputy Director-General, DG FISMA, European Commission. – Yes, on the resources issue as you know, DG JUST is in the lead when it comes to anti-money-laundering and terrorism-financing policies.

This being said, I think in our response we also say that we have quite a number of people that do work on these issues, supporting DG JUST, and these people have, in particular, prepared the legislation which was put forward in September, but they have to do that on top of other things. So, it is not the case that nobody’s working on these issues at all in DG FISMA.

On top of that, looking now at the issue of market integrity in general, maybe it’s a question of definition, but we take integrity extremely seriously, of course, and we want to achieve financial stability and investor protection, but also overall market integrity.

That work is very much embedded into the rule-making function that we have, so if we take the notion of integrity in a broad sense, lots of people are working on that in DG FISMA every day.

Adam Farkas, Executive Director, European Banking Authority. – Just very briefly, I can confirm that we received that letter and we responded in a very short message. What I can
confirm is that we have paid significant attention to this. We did our own detailed research into what the issue is and how this could be tackled in the context of banking supervision rules and within our tools. One clarification is that one critical question which, at this point, we could not answer is whether these activities are going to be deemed criminal, so the criminality of them by the respective criminal authorities, because then we have different pathways regarding how strongly we can address them.

Sven Giegold (Verts/ALE). – It is very clear in Germany, the law enforcement on it, there are lots of ongoing cases, there’s no doubt, and I call on you to open up the Article 224 procedures.

David Coburn (EFDD). – Chair, in the appalling UK withdrawal agreement which the European Union has presented to the British Parliament – which is, quite frankly, an insult to a nation which liberated Europe and has democratically decided to leave the EU – it is stated that the European Investment Bank bankers working in London after Brexit will have immunity from British law. How can this prevent money laundering? Furthermore, the UK must agree not to prosecute EU employees who are, or might be deemed in future to be, criminals. That’s Article 101. How, in the name of God, can that help address money laundering? Furthermore, the UK must promise never to tax former EU officials based in the UK on their EU pensions, or tax any current ones on their salaries. The EU and its employees are immune to UK tax laws – that’s Article 104. I’m sure Mr Mandelson and Mr Kinnock will be delighted with that, but how, in the name of God, can you say that this helps with anti-money-laundering efforts?

This establishment seems to be, I don’t know what the collective for hypocrisy is, but let’s say a mountebank of hypocrisy, certainly a mountain of hypocrisy. I would like to hear the official view of how any of these things can possibly help address money laundering. It defies logic, as far as I’m concerned.

Martin Merlin, Deputy Director-General, DG FISMA, European Commission. – Frankly, I am not entitled to comment on the withdrawal agreement which has been agreed upon …

David Coburn (EFDD). – You don’t have to comment, all you have to do is say whether you think such articles, which do exist in this agreement, are something that you consider a good idea to prevent money laundering.

Martin Merlin, Deputy Director-General, DG FISMA, European Commission. – I think the withdrawal agreement goes far beyond the discussion that we are supposed to be having here today, and I am not entitled to comment on these matters.

David Coburn (EFDD). – Surely you can comment on whether or not agreements of this sort, of any sort for any country, would in fact enhance the money laundering that you are supposed to be stopping? Surely you can give a personal view on that? You don’t have to comment on the actual deal, we’re just asking you to talk about the pieces of legislation that are in there.

Chair. – I think that the representatives from the Commission have expressed themselves.

David Coburn (EFDD). – And the other gentleman, would he like to comment?

Chair. – There will be a lot of discussion about …
David Coburn (EFDD). – Would the other gentleman like to comment, or are you trying to close it down, Chair?

Chair. – Would you like to comment, Mr Farkas?

Adam Farkas, Executive Director, European Banking Authority. – I don’t think we are entitled to comment. We have not been …

David Coburn (EFDD). – Well it is not commenting on the actual deal, just on whether giving immunity to officials in this way is something that you would think is good for money laundering. You have given views on every other thing in the world, every other country in the world, every tax haven, surely you can give a view on this one?

Chair. – We are getting outside the scope …

David Coburn (EFDD). – Ah, we’re closing it down! You don’t like free speech in Europe, sir? That’s why we’re leaving.

Chair. – You cannot expect an answer to a question outside the scope of what our guests deal with.

David Coburn (EFDD). – Well, I don’t think money laundering is outside their scope.

Ana Gomes (S&D). – Chair, my concerns are actually about how we can prevent the UK, once it is outside the EU, from turning into a huge tax haven, worse than it is already.

(Interjection from Mr Coburn: ‘That’s an insult’)

But my question is to the representatives of the agencies here. OK, we agree we need an EU Financial Intelligence Unit, which, by the way, was blocked by the Council when we were negotiating the Fifth Anti-Money Laundering Directive, but I hope they will see the need for that as a result of the conclusions you shared with us. In relation to the reinforcement of the European Supervisory Authorities’ mandates, I would like to ask whether you are also proposing to have a kind of stress test, scrutinising the existing banking institutions and the shadow banking system, the payment institutions and so on, so that we could eliminate those which, for instance, are owned by politically exposed person (PEPS) and serve only as laundromats? There are plenty of them! In relation to my own country, I have pointed a number of them out to you and I must say that, actually, the European Banking Authority has reacted in some cases. As for the European Central Bank, it’s quite outrageous that they feel completely off the hook.

Lastly, some people have suggested to me that the current auctions of treasury bonds which Member States are organising, in which they do not apply anti-money-laundering controls, and in which those purchasing the bonds can be anonymous, constitute a huge organised money-laundering scheme by our authorities. Is that possibility being contemplated?

Martin Merlin, Deputy Director-General, DG FISMA, European Commission. – Well, on the first point, the European Banking Authority (EBA) is already conducting risk assessments to determine where money-laundering risks might stem from within the financial sector, and the expectation is that it will do that regularly to make sure we identify the weak spots in the financial system, so that we are able to act upon them by either regulatory or supervisory means.
And even though these are not stress tests, as such, like those applied to the banking sector, we definitely believe that this work is necessary to make sure that we address weaknesses in the financial system. Adam Farkas might like to add something on that.

In the proposal that we made, we also want to ensure that the EBA can test the strategies and resources of national authorities to check that they are able to cope with emerging risks in the financial sector. It’s not good enough to be able to cater for very traditional risks in relation to banks: national authorities need to be up-to-speed with the most recent money-laundering trends and that should be overseen by the EBA.

As regards the auctioning of treasury bonds, I don’t want to duck the question, but I would need to look into that because I have not been briefed on the subject. I’m sorry.

Adam Farkas, Executive Director, European Banking Authority. – Very briefly, as I mentioned in my introductory remarks, we currently have a mandate to issue, with the other European Supervisory Authorities (ESAs), this joint opinion on money-laundering risks, on a biannual basis. We are working on that. And, of course, different sources of money-laundering risk should be analysed by the respective ESAs – probably the auctioning of government bonds would fall within the scope of the European Securities and Markets Authority (ESMA).

That is what we are doing now, and the Commission’s proposal, as Ms Gomes mentioned, is to strengthen the role of the European Banking Authority (EBA) in doing this risk assessment. A stress test is probably not the best tool for that.

One other point you made, and you referred to specific cases, was on ownership and general ‘fit and proper’ assessment. As we all know, even with a single supervisor for the eurozone, the ‘fit and proper’ assessment is a matter for national implementation, and therefore the single supervisor is carrying out assessments according to 19 different national regimes.

We at the EBA carried out a peer review of this question for the entire European Union, and we identified it as a major issue. We were trying to issue a formal opinion to the legislators to change it, but that was blocked by the EBA Board at the time, so the structure of ‘fit and proper’ assessment is unchanged.

Chair. – Thank you very much to all the speakers: the Executive Director of the European Banking Authority, Mr Farkas; Deputy Director-General of DG FISMA, Mr Merlin; and acting Deputy Director-General of DG JUST, Ms Jour-Schroeder. We will reflect what we heard in our further work. Thank you very much. That concludes our hearing.

(The meeting closed at 13.09)